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NOMINATION OF J. CRAIG POTTER

HEARING

BEFORE THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

ON

THE NOMINATION OF J. CRAIG POTTER TO BE ASSISTANT ADMINISTRATOR FOR AIR AND RADIATION, ENVIRONMENTAL PROTECTION AGENCY

JANUARY 30, 1986

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NOMINATION OF J. CRAIG POTTER

THURSDAY, JANUARY 30, 1986

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Washington, DC.

The committee met, pursuant to notice, at 10:07 a.m., in room SD-406, Dirksen Senate Office Building, Hon. Robert T. Stafford [chairman of the committee] presiding.

Present: Senators Stafford, Simpson, Abdnor, Moynihan, and Lautenberg.

OPENING STATEMENT OF HON. ROBERT T. STAFFORD, U.S. SENATOR FROM THE STATE OF VERMONT

Senator STAFFORD. The committee will please come to order.

I know Senator Simpson wished to be here to introduce the nominee this morning, however, he is attending a conference and my guess is that it could last a while, and he will feel obligated to stay there. So, we will start with the understanding that when Senator Simpson is free, he will come here and introduce the nominee.

Let me first say, Mr. Potter, that I understand your wife is in the room. For the committee, let me extend our welcome to her.

The first order of business this morning is to hear from you, the President's nominee to be Assistant Administrator for Air and Radiation at the Environmental Protection Agency. The Agency has been without an official occupant in this important office since February 15, 1985. I hope we will shortly have in place an assistant administrator with the authority and the will to be an ardent advocate for clean air and safe handling of radioactive materiel.

While congressional and public attention has been focused on hazardous waste issues over the last 2 years, no one should be complacent about the quality of the air we breathe or the atmosphere we depend on to sustain life. Air pollution problems we thought we had addressed now appear more extensive and difficult than we had originally believed. Acid deposition, persistently high levels of ozone, evidence of adverse health effects from levels of pollutants we thought were safe—all of these are indications that current measures to deal with the traditional pollutants may not be enough.

On another front, almost everyone acknowledges the failure to deal adequately with hazardous air pollutants. Harmful chemicals escape into the air in unknown quantities on an unknown but almost routine basis. On all too many occasions, chemical releases cause immediate injury and, in some cases, death. Any concentrated attack on these problems touches the lives of almost everyone,

car owners as well as automobile manufacturers, corner service stations as well as oil refineries, neighborhood dry cleaners as well as chemical manufacturers, and even wood stoves as well as utility boilers.

While we in the Congress grapple with these issues periodically, the Assistant Administrator for Air must deal with them daily. The assistant administrator must keep in mind the need to make decisions that will benefit us all in the long run in the face of harsh critics who look only at the short term.

Those critics may be within the Agency itself or within the administration. They may also be ordinary people who do not want to be required to have their automobile inspected or corporations which do not want to pay to install pollution control equipment. Criticism may even come from Members of the Congress.

In short, Mr. Potter, the office to which you have been nominated is a difficult and contentious one. I hope this characterization comes as no surprise to you. But the office is also a very important one. It is important to the well being of this country and, as we often are reminded, to our neighbors on this continent with one of whom I am going to have dinner tonight, and I will get a further reminder at that time.

In fact, as we learn more about the consequences of our activities on the atmosphere and on remote corners of the world, it is fair to say that an Assistant Administrator for Air can have an effect on the well being of this planet. If confirmed, Mr. Potter, you will have a difficult job ahead of you. I hope today we will hear how you intend to tackle that job, what you see as the most pressing problems, and how you expect to work with others in the Agency and in the administration to see that public health and the environment are protected.

Mr. Potter, we will go ahead with your statement. We are doing this in part because your boss, Lee Thomas, is due here in 45 minutes and we expect a rather intense session with him.

Mr. POTTER. Thank you, Mr. Chairman.

I am pleased to be before you this morning——

Senator STAFFORD. If you will stop right now, the gentleman from Wyoming has indulged in a late, dramatic arrival just like John Wayne.

Senator SIMPSON. Late and demented, you said?

Senator STAFFORD. Late and dramatic.

Senator SIMPSON. I see. Excuse me, I misheard there.

Senator STAFFORD. Alan, I have just made an opening statement, and Craig has not had a chance to say anything as yet. I have said you were coming as soon as the conference would allow you to. So, we are delighted you are here and appreciate your opening statement for him.

OPENING STATEMENT OF HON. ALAN K. SIMPSON, U.S. SENATOR FROM THE STATE OF WYOMING

Senator SIMPSON. Mr. Chairman, it will be short. I am sorry to be late. We were grappling with Gramm-Rudman-Hollings, as you know, and have visited upon ourselves the same 4.3 reduction that

everybody else will be involved in, and they will be watching to see that we do that, I think.

I take this opportunity to introduce to the committee J. Craig Potter and his fine wife, Louise. Craig is originally from Wyoming, and he brings with him a great wealth of experience in environmental issues which is going to serve him well as he assumes his new post at EPA.

He took a law degree at the University of Wyoming. He was previously a lawyer in Cheyenne, WY and came to Washington to work originally for Senator Gale McGee of Wyoming, our colleague who was here for some 18 years and my former history professor, I might add.

Craig worked very well with the Senate Post Office and Civil Service Committee and on the Governmental Affairs Committee as well as on the Senate Appropriations Committee. He migrated to the Department of Interior where he served as a special assistant to the Administrator and then Deputy to the Assistant Secretary for Parks. You all know what his remarkable record is; it is before you.

I won't pursue further matters with regard to his fine credentials. But in that task he had to keep a direct contact with dozens of interest groups, the State Government, regional commissions, agencies, Members of Congress, foreign governments, and he knows full well the perils of the task ahead of him. He will be getting pressure from all types of interest groups on all sides of every given issue in this new position.

He has a fine background about the clean air issues, and that is something I know the chairman is deeply interested in as are all of us on the committee, especially as those issues affect national parks, pristine areas of the country. He is familiar with radiation issues and, in the past few weeks, has brought himself up to speed on all the nuances that he will handle as Assistant Administrator at EPA.

I know that the EPA Administrator, Lee Thomas, has a great deal of confidence in Craig's management ability. So do I.

I look forward to a fine relationship between Craig and this committee, and with his staff during his tenure. He is going to carry out a very wide range of activity and one, as I say, involves the subcommittee which I chair, Mr. Chairman, and that is the Subcommittee on Nuclear Regulation, because the EPA handles this Office of Radiation programs.

I have had a long-standing interest, and you have heard me be very critical sometimes as to how those activities are carried out and, in particular, how they are carried out with the NRC and the degree of attention and sensitivity devoted by EPA to coordinating its responsibilities with the NRC. I have reviewed that with Craig. They must do a better job of that. The conflict between EPA and NRC is not serving the public interest. The public interest is the public health and safety, and when we have EPA and NRC playing badminton with each other on radiation and radon, they do not seem to function. That is something that I will be watching carefully and I know you will, too.

He is ready to go. He is ready to serve. He is a bright, articulate man and will do the job. I am very pleased. He is taking on one of

the toughest jobs in Washington as Assistant Administrator for Air and Radiation activities, and I strongly commend him to you without any hesitation whatsoever. He is a fine person and I think will do us a fine job.

Senator STAFFORD. Thank you very much, Senator Simpson. What you say impresses this committee a great deal since you are a very valuable member of this committee and the chairman of its Nuclear Regulatory Subcommittee.

Senator Abdnor, did you have any statement?

Senator ABDNOR. No; I didn't, Mr. Chairman, except I want to welcome Mr. Potter to the committee. I have known him for some time, and I had an opportunity to visit with him. I am extremely pleased that he is going to be with us. Thank you.

Senator STAFFORD. Thank you very much.

I would say to the nominee, realizing he served with Senator Gale McGee, that when I first knew Gale McGee I thought that he brought a new breath of sartorial splendor to the Senate. Nobody ever approached the colorful sports jackets that Gale used to wear even in the Senate. I see that particular influence hasn't reached you, Craig. You are dressed more like a Wall Street lawyer than that.

But welcome here again, and we would be glad to hear your statement.

Senator SIMPSON. Mr. Chairman, someone said that my sartorial habits would indicate that I should stay inside on trash pickup day.

Senator STAFFORD. Well, Alan, you would fit right in in Vermont, in that case.

Senator SIMPSON. Thank you, Mr. Chairman.

STATEMENT OF J. CRAIG POTTER, NOMINEE FOR THE POSITION OF ASSISTANT ADMINISTRATOR FOR AIR AND RADIATION, ENVIRONMENTAL PROTECTION AGENCY

Mr. POTTER. Mr. Chairman and members of the committee, I am pleased to be before you this morning as the President's nominee to be the Assistant Administrator for Air and Radiation at the Environmental Protection Agency.

I am honored to have the opportunity to serve in this position. If confirmed, I pledge my full commitment to work with this committee, the Congress, and all others concerned with protection of human health and the environment.

I know that the committee has a busy schedule this morning, and rather than read my written statement, perhaps I could have it entered into the record and proceed by summarizing it before answering your questions.

Senator STAFFORD. Without objection—and I know of no one to object except Senator Abdnor, and he won't—we will place your entire statement in the record.

Mr. POTTER. Although I come before you as a presidential nominee, after more than 10 years of experience in Government, I consider myself to be a professional manager. Throughout my Government career, I have managed multifaceted, people-oriented programs. I consider myself to be dedicated to and experienced in formulating policy and advising leaders in Government at the highest

levels. I have had extensive experience at developing and evaluating programs, developing and reviewing regulatory activities, enforcing statutory and regulatory standards, and interacting at all levels within and outside of Government where these activities impact.

In my statement, Mr. Chairman, I mention four issues that will require early and on-going effort on my part and no doubt on the part of this committee as well as the Office of Air and Radiation. Without prioritizing, I will just say that each of this these issues envelop intricacies and nuances that are unique. Collectively, they portray a programmatic undertaking that almost defies imagination.

The issue of air toxics, Mr. Chairman, is of course much more than an issue. It is, as you know, a whole set of issues. In a very real sense, it is difficult to know where to begin with these issues. In terms of health effects, it is probably the most serious of the issues we must confront, although I am not sure all the scientists would even agree on that.

I know your staff and the committee are quite concerned about environmental protection activities in this area. Before I outline what I see as some of the primary needs, perhaps it might be appropriate to point out the extent to which EPA has already stepped up its activities.

In 1985, EPA had about 220 full-time employees and approximately $26 million invested in this effort. 1986 saw an increase of almost 50 percent, 47 percent, to 324 full-time employees and almost a doubling to $46 million in terms of funds. Although I haven't been briefed on the 1987 proposal and it would be imprudent to comment on it even if I were, I understand that there is likely to be a significant increase there as well.

Basically, Mr. Chairman, I fully support the air toxics strategy announced last year by the Administrator. I believe, however, that we must move more aggressively to develop emission standards for hazardous air pollutants. I pledge my energies to the pursuit of this effort.

We need to put more effort into focusing on nontraditional sources and multipollutant sources such as incinerators and coke ovens. In recognizing the limits of section 112 of the Clean Air Act, we must look to other authorities such as TSCA FIFRA and RCRA. Of course, to the extent that we do this, we must recognize that this issue, most of all, is a classic example of so-called cross media complexities. That means coordination, not only within EPA, but here in Congress and outside where our regulatory activities impact directly.

On the issue of SO_2, Mr. Chairman, as you well know, the Office of Air and Radiation efforts are driven by the strategy envisioned in the Clean Air Act. I therefore pledge my early and earnest efforts to develop and SO_2 ambient standard proposal consistent with available information. As you know, this in itself could be quite a controversial undertaking.

Beyond that, we will continue to wait to see if ambient trend data significantly reflect the effects of NSPS emission controls. Operationally, anything beyond this may well require further guidance from the Congress and the President in the context of the

Clean Air Act itself. I expect we will be working with the committee in that regard.

Finally, Mr. Chairman, I promise you that I will work with this committee to do everything I legitimately and responsibly can to address this problem.

There is no question in my mind that acid deposition is an environmental problem which deserves our attention. There is no question in my mind that man made emissions are primary causes of acid deposition. At the same time, I believe there remains legitimate and significant scientific uncertainty as to the magnitude and extent of current damage, the relevant role of different acidic pollutants and their precursors in causing environmental damage, and the prognosis for future damage.

I think we must also recognize that associated with the sudden imposition of any major emission reductions are serious socio-economic impacts.

On the issue of ozone, Mr. Chairman, it is my understanding that dialogue has already begun with Congress, and I envision more, and I welcome feedback from the committee on that issue. It is note worthy that there are many in the Agency who feel that ozone may possibly be our most pervasive air pollution problem.

Despite a lot of effort to meet the ozone standard, projections are that a number of areas are not going to meet the standard by 1987. Therefore, with that in mind, the Agency has begun now to try to embrace efforts within the Congress and outside to do what we can to see that the number of areas is at the bottom end of that scale.

I welcome feedback from the committee on the question of ozone and I hope that we can move forward quickly and aggressively to deal with this problem. Again, it is an issue that will take full-time effort.

Finally, on the issue of radiation programs generally, I think there has been a feeling that while the radiation program is relatively small as compared to the air program, it needs some more attention, as indicated by Senator Simpson. Senator Simpson and I have talked about this.

We have begun to move in the Agency on the issue of radon. I think things look reasonably good for the future as regards the effort to deal with this problem; but it is a major problem, certainly in the Reading Prong area of Pennsylvania, New York, and New Jersey and as we begin to deal with it, we are going to have to find out whether or not and to what extent we have the problem elsewhere.

Beyond that, there are many issues in the radiation program which I know you are well aware of and which, no doubt, we will be before this committee on, including mixed waste, uranium mill tailing standards, and so forth.

I wouldn't want to say anything further, Mr. Chairman, except that these issues aside, there may well be other issues and probably will be other issues that we will have to deal with. I welcome the opportunity to work with this committee in protecting human health and the environment.

Senator STAFFORD. Thank you very much for a good statement. One thing I have learned in 25 years here is that every year, some issues we do not and cannot anticipate certainly blow up on us and

become very important ones. Probably, that will happen in 1986 as well.

At the request of any committee of the Congress, are you willing to appear before it as a witness?

Mr. POTTER. Yes, Mr. Chairman.

Senator STAFFORD. Do you know of any holdings or affiliations you might have at the present time that could put you in a conflict of interest position in carrying out your duties as an assistant administrator at EPA?

Mr. POTTER. No, sir.

Senator STAFFORD. On behalf of members who cannot be here this morning because of conflicting committee assignments and the floor situation on Conrail, I am going, without objection, to reserve to them the right to submit questions in writing to you if they would care to do so in the hope that you might respond as speedily as possible so that we can expedite action on your nomination.

Mr. POTTER. I would be happy to do that, Mr. Chairman.

Senator STAFFORD. I see a valuable member of our committee has just arrived, Senator Lautenberg of New Jersey.

Senator, the nominee has been introduced by Alan Simpson. I have made an opening statement. I have reserved rights to members. If you have any statement, this would be a good time for it.

Senator LAUTENBERG. I appreciate that, Mr. Chairman. I will take just a couple of minutes.

Senator STAFFORD. All right.

Senator LAUTENBERG. I had an opportunity to meet with Mr. Potter, and we discussed some issues that are of direct concern to me. I believe it is fair to say that he shared my view on some of those concerns. For the record, I would like to explore a couple of those here so it is clear in the public domain.

Mr. Potter, I am very interested in the problem of radon gas and EPA's response to this problem. I just wanted to ask you a couple of questions about the health threat, because, though it is a very important issue in my State, it is certainly not just a New Jersey issue. My colleague, Senator Mitchell from Maine, has an interest in it, and it is believed that as many as 30 States across our country have a problem with radon gas to varying degrees.

EPA estimates that as many as 5,000 to 30,000 Americans could be dying each year of lung cancer that occurs as a result of exposure to radon gas. Now, CDC has estimated that 6 million Americans across the country could be exposed to hazardous levels of radon in their homes.

I just returned from a trip to Sweden where the government has been involved in a significant amount of work and research with radon gas. They have released, just recently, a detailed report on what they think ought to be done with it which includes standards for building, standards for mitigation, and testing standards committing the communities and the Federal Government to deal with that not at the home owner's expense.

There is a considerable amount of concern out there, and I just wanted to get your comments on how big a threat you think radon gas might be. I understand that I missed, in your opening remarks, a comment about that. Forgive me, Mr. Chairman, for any delays but, if you wouldn't mind, Mr. Potter, just to express for the bene-

fit of the group here on the record what you think about the radon gas threat.

Mr. POTTER. I did mention in my remarks, Senator, the situation in the Reading Prong area regarding radon. As you know, it is regarded as a serious enough problem that the Environmental Protection Agency has undertaken a major task force effort. I think there have been direct contacts with you and your staff in that regard.

The problem of radon is one that is serious. There is no question about that. It is not a problem that is not without solutions, however. Unfortunately, I think we need to know more than we do, and in that regard, there are a number of studies underway I am told. EPA is working with the Department of Energy, I believe, and there are other activities taking place in Maine and other areas where they are trying to pin down the relationship between radon gas and the radioactive toxics that come from radon and the relationship between that and lung cancer.

There are other things that can be done, and I think there may be a need to work with this committee to address the radon issue. I hope that we can work together as we move forward in embracing efforts with other agencies and entities that may have a direct involvement in this problem. But there is no question that it is a problem.

Senator LAUTENBERG. The view of the problem, Mr. Potter, is going to get clearer as we devote resource and attention to the radon problem. You know that we got some funding specifically for radon research in the fiscal year 1986 appropriation. Do you have any idea, at this point, what is going to be recommended? Have you any suggestions as to what is going to be recommended for the fiscal year 1987 budget to continue that review?

Mr. POTTER. As I indicated previously, I haven't actually had a budget briefing. After our discussion yesterday, I have followed up and I am told that the 1987 budget looks fine for radon. I think we are well positioned to deal with this problem in terms of this 5-year program that has been kicked off within the Agency. That really comes from the Administrator and the discussion we had last night.

Senator LAUTENBERG. The 5-year program, in its broad, context, may be understood by you, Mr. Potter, but I am not sure that I understand what the 5-year program constitutes. For instance, in Sweden, they say that 40 percent of their lung cancer deaths are directly attributable to radon gas each year, 40 percent.

We devote time to many things that affect the public health that don't seem to have as specific statistics to support the concern. Now, when you talk about a 5-year program, how do you envision that?

Mr. POTTER. As I understand it, there has been a proposal that was accepted by the Administrator that consisted of technical assistance in the Reading Prong area which has already begun, a national assessment to accurately determine radon levels across the country, efforts to begin to develop methods of correcting the problem in existing structures, homes primarily, and efforts to try to identify methods of preventing the problem in the future. That essentially is an outline of what this program consists of.

Senator LAUTENBERG. That includes the national assessment which is a review of potential hot spots across our country where uranium deposits exist and other materials that can produce a radon gas threat; correct?

Mr. POTTER. That is correct, Senator.

Senator LAUTENBERG. Do you have any idea what it might take to fund this program on a continuing basis?

Mr. POTTER. I really don't.

Senator LAUTENBERG. Well, you know I am going to be counting on you for support in this program. I am concerned, Mr. Potter, about your optimism that things look pretty good on a 5-year basis if you are not certain about what it is going to cost to do this. We got $1.5 million worth of funding last year. That is a start. I won't even call it a good start, but it is a start.

With a problem as vast as this, I am concerned that we don't minimize the national concern or my concern or other concerns within this committee about this problem. If we have 6 million people potentially at risk, I would ask if anyone here can think of any natural disaster that we have had in this country that could threaten the health of 6 million people. We are talking about a problem of enormous size.

I am content to let this pass for now, but I would ask, Mr. Potter, that among the first duties that you take on is to respond, if you will, more specifically about what you think the long-range plan ought to be to deal with this problem. I would also ask you to engage us in the process in terms of budgeting and in terms of financing these problems to see if we can be of help. I am sure you are aware we are going to be discussing this with Mr. Thomas in a bit about what is happening with Superfund and other EPA activities in view of our budgetary constraints.

Mr. Chairman, I have several questions I will submit for the record, but that is all for now.

Senator STAFFORD. All right. Thank you very much, Senator Lautenberg.

Mr. Potter, when this committee held a hearing last December on the administration's acid rain research program, EPA officials said that during calendar year 1984, emissions of both sulfur dioxide and oxides of nitrogen had increased. They were unable, however, to tell us the size of those increases.

Can you tell us how much emissions of those pollutants have increased and why, and can you also tell us what, if anything, you can and will do to prevent such increases in the future?

Let me preface your answer by saying that for any of these questions if you prefer to respond in writing, it is agreeable to me as you long as you do it as quickly as possible, in your own interest.

Mr. POTTER. On the question of the SO_2 emission increases, Mr. Chairman, I think that the information has not been actually published, but I believe that numbers are 600,000 tons for SO_2 and I think 300,000 tons for NO_x.

Senator STAFFORD. That is the increase since 1984?

Mr. POTTER. That is right.

I understand the reason they were not published was because of the possible need to have peer review, and that may not have happened. I discussed this last night with the Administrator, so I say

this not being certain whether or not peer review has occurred. I think that was the reason there was some hesitancy to give you the information before, or to give it to anyone, for that matter.

So, these numbers are tentative, as far as I understand.

Senator STAFFORD. As soon as they might no longer be tentative, I trust that they will be made available to this committee.

Mr. POTTER. Absolutely.

Senator STAFFORD. In your written statement, you say you hope to work with the committee on acid deposition in order to deal with what we all recognize to be a serious problem. If you acknowledge that acid deposition is a serious problem, as I might say, parenthetically, Drew Lewis has, do you personally believe that we should begin now to reduce emissions that contribute to the problem?

Mr. POTTER. I think that everyone recognizes there is qualitatively, a problem at this point, and I think that that is significant because there has been a difference of opinion on that in some quarters in the past.

The issue, based upon what I have been told, is the quantitative aspect, and that falls into several categories. It is a difficult conclusion to reach, that being the case. For that reason, I think we need a good deal more certainty. And this is basically the position that was stated by Mr. Thomas in the December hearing to which you referred.

I think we need to wait on that basis until we can have more certainty, and this is not by way of delay. This is by way of trying to understand whether or not the actions that might be taken would solve the problem, because, as you well know, the choices are few and they are very expensive. The implications of that in terms of the pocketbooks of blue collar workers in some areas of this country are every bit as severe as they are in terms of the pocketbooks of people where these pollutants are falling. This is an issue that we have to deal with in that context.

Senator STAFFORD. I understand your answer, and I recognize that you are working, or will be, for this Administration. Your answer is we need more study before we act further. Is that it?

Mr. POTTER. In terms of specific information, there are areas where we have a good deal more information than other areas. I welcome the opportunity to engage this committee in understanding and pinning down that information.

One of the major activities ongoing, as I understand it, within the Office of Air and Radiation regards the question of implementation strategies. These embrace a major uncertainty. There are, in terms of terrestrial effects, aquatic effects, and so forth, other significant questions about terrestrial effects, particularly in forests. There just simply is a great deal of disagreement. We need to understand and try to resolve that disagreement.

Senator STAFFORD. All right.

With regard to hazardous air pollutants, what is your view of a policy that provides different levels of protection to individuals depending on whether they live in heavily or sparsely populated areas of the country?

The States have criticized EPA's air toxics strategy as it is being used in the acrilonitrite pilot program. The States believe EPA

should use a State-local referral only for air toxic problems that are truly local in nature, not when areas in several States have facilities emitting a hazardous pollutant.

The States also urge that the Federal Government retain oversight and enforcement authority over all hazardous air pollutant controls.

What, in your view, is the appropriate role for the Federal Government in regulating emissions of hazardous pollutants?

Mr. POTTER. I think that within the context of section 112 and the development of hazardous emission standards, we can deal best with hazardous pollutants that are widespread and cause high emission levels. It appears that there are problems in dealing with high risk toxics that are emitted from a relatively few number of plants.

A major thrust of the strategy has been to try to work cooperatively with the States and local communities, recognizing that they are going to have a major role in this in any event. And the way in which that overlap occurs is very complex.

I think that the issue of the State referral part of the program has been raised by many people. I don't know the current state of review within the Agency, but as I understand it, they are reviewing the proper level of activity that should be referred to the States.

Senator STAFFORD. All right.

Mr. Potter, our knowledge of atmospheric chemistry has increased, and, as it has increased, it has become apparent that there are physical and chemical relationships between virtually all air pollutants ranging from sulfur dioxide to CFC's. So much attention focuses on the acid rain program that you will have no choice, we think, but to maintain adequate levels of funding for research in that area.

I would be interested in the importance which you will assign to research and regulation on other air pollutants and chemicals, especially CFC's and other gases which can destroy the ozone layer and alter climate. Will you assign a high priority to them and, more importantly, start regulating them when, beyond a reasonable doubt, the evidence indicates that it is necessary?

Mr. POTTER. Based on what I have been told, one of the problems with section 112 is that it does not seem to address this so-called toxic soup of unburned hydrocarbons and other non-point source type compounds and toxics that are in the air.

There are certain indications that there may be problems. Although I am not fully briefed on the state of the review within the Agency, I think there is an initiative now to begin to look at this problem. I would pledge my efforts to earnestly begin to do that.

Senator STAFFORD. All right. Thank you very much.

We are delighted that Senator Moynihan is here. Senator Moynihan, this is Mr. Potter, the nominee for Assistant Administrator at

EPA. We have concluded our examination of him unless you have some questions or statement you might wish to make.

Senator MOYNIHAN. Mr. Chairman, if you would forgive my tardiness, we are beginning to deal with the tax bill in the Finance Committee. Otherwise, I would have been here. I would like to welcome Mr. Potter and say how much we are impressed by his credentials and to say, what I think my colleague from New Jersey, Mr. Lautenberg, has said, that there is always something new on the horizon which makes this an interesting field.

We would particularly like to know more about this whole radon matter, and we hope that, without making any large propositions, we hope that you will go about it with the question, now, look, it obviously is a problem and a problem of technology and we can do something about it, and come to us with answers, come to us with information. Tell us, in particular, where we have problems, even when you can't solve them. We ask you to let us know about parts of the country where you think this is a problem.

We have it in New Jersey, Pennsylvania in the Reading Prong area, the southern tier of New York, and we look forward to hearing you tell us before we find out and call up and ask why you didn't. That is not your pattern, but that has been a pattern in the past.

Mr. POTTER. If I may respond, we had an exchange, Senator Lautenberg and I did, and I made a commitment to follow up. I assume there will be contact with the committee on this issue.

I think that efforts have already begun. From what I understand, Senator Lautenberg—and I certainly hope it applies to you—is reasonably satisfied with the beginning efforts up in the Reading Prong area, but we are just getting started, as you know.

Senator MOYNIHAN. May I just make one point about which administration officials are very open, and that is that when we began dealing with problems of acid rain 5 or 6 years ago, the administration came in, and the word came out from the Office of Management and Budget that you were not going to find anything out about acid rain, period. This was openly said. We know who did it and we know why he did it.

You are not going to let that happen to you? Tell me you are not going to let that happen to you.

Mr. POTTER. No, I am not.

Senator MOYNIHAN. If you start getting lines from OMB to the fact that you are not going to find out anything about this problems, I said so, my name is David Stockman, I am the Director—you will tell us, will you?

Mr. POTTER. Absolutely.

Senator MOYNIHAN. Well, may I say to you that your predecessors didn't, and we have great respect for you, but it is necessary to point out that those predecessors didn't leave this town in very happy circumstances. Don't let that happen to you. You are a good man.

Mr. POTTER. Thank you, sir.

Senator MOYNIHAN. Thank you.

Mr. POTTER. I have always been forthright with this committee, and I have always been honest, and I will continue to do that.

Senator MOYNIHAN. Well, you are going to be under higher levels of pressure or you could be.

Senator STAFFORD. Thank you very much, Senator Moynihan.

Thank you, Mr. Potter, for appearing with us this morning. We will act on your nomination as speedily as we can. If there are written questions, and Senator Lautenberg has some, the quicker you can answer those, the quicker we can act.

Mr. POTTER. Thank you very much, Mr. Chairman and members of the committee.

Senator STAFFORD. The committee will stand in recess for about 5 minutes, and then Mr. Thomas will be here.

[Whereupon, at 10:51 a.m., the committee proceeded to other business.]

[Mr. Potter's statement, résumé, and responses to a committee questionnaire and additional questions follow:]

57-648 O - 86 - 2

STATEMENT OF J. CRAIG POTTER

FOR CONFIRMATION AS
ASSISTANT ADMINISTRATOR
FOR AIR AND RADIATION
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE U.S. SENATE COMMITTEE
ON ENVIRONMENT AND PUBLIC WORKS
JANUARY 30, 1986

Mr. Chairman and Members of the Committee:

I am pleased and honored to appear before you today as the President's nominee to be the Assistant Administrator for Air and Radiation at the Environmental Protection Agency. If confirmed, I pledge to eagerly work with this and other committees of the Congress in an effort to resolve important issues confronting us all.

My past appearances before you have taught me much about the concerns of the Congress. I've learned the absolute importance of communicating openly and honestly with Congressional Members and staff. Even more important, I've learned that early communication with Congress is essential in avoiding miscommunication, and that miscommunication is a far more serious failing than no communication at all. I believe my past relations with Congress, especially with this Committee, have shown my commitment to prompt and honest communication. The real key, of course, is consistent and ongoing contact, and I would like to assure you at the outset of my intention to continue to work as closely as possible with this Committee and with the Congress as a whole.

I feel strongly that my previous experience at the Department of the Interior and in various staff positions in the United States Senate will greatly assist my transition into the Environmental Protection Agency. Those experiences have taught me much about the interactive dynamics of many of the environmental issues affecting the health and welfare of Americans everywhere.

But more than that, I have learned that the complexities of these issues require a sense of refined judgment and responsibility that is a far cry from that which has sometimes characterized public policy formulation in the past. Our decisionmaking processes are far more complicated than ever before, and the impacts of these decisions are frequently far broader than intended. And yet in the face of all of this, we are confronted with uncertainties that almost defy imagination. Indeed, if there is one word that characterizes life in the Environmental Protection Agency, it is uncertainty. As the Administrator has stated, there are uncertainties associated with every issue at the EPA, and there are no issues where there is no uncertainty. Nowhere is this more true than in the Office of Air and Radiation.

Since you've seen me several times before today, you have no illusions about my politics. I am an active advocate for the Reagan Administration. At the same time I am a pragmatist. Even though we may not always agree, we

nevertheless must work together to address our common concerns about public health and the environment. You can be assured of my willingness to cooperate with you, to share information with you, and discuss with you frankly and openly my role and actions at EPA.

If confirmed, this new position is going to expose me to a whole new set of constituencies. During my days at the Department of the Interior, I learned that the push and pull of competing interest groups is not only inevitable, but is also a healthy sign of a dynamic society. This country not only accepts pluralism, it embraces it. I believe public policy is sharpened when it is ground between the wheels of differing opinions. On my new job, I intend to be receptive to the views of all constituencies, and beholden to none. By weighing all the competing interests in the balance of the law, I hope to execute the most reasonable public policy. One thing that I can assure you of is that I strongly share the Administrator's view that EPA must assure protection and enhancement of human health and the environment.

For the past several weeks, I've immersed myself in air quality issues, trying to learn as much as I can as fast as I can. I'm no expert yet, and in fact - the more I learn the more I realize how truly complex this job will be. Nevertheless, it is clear that four issues will demand my early and ongoing attention:

First, EPA is currently reviewing and expanding its policy on toxic air pollutants. In the past, several of you have expressed concern that EPA was not moving fast enough in this area. One of my top priorities will be assuring that public health is protected from those air pollutants that are hazardous, and alleviating public fears about those that are not. I do not make this promise lightly, for good management of the air toxics program will require a major effort, not only within the Office of Air and Radiation, but across the agency as a whole as well as out in the States and affected communities. This issue alone could easily absorb the full concentration of a new Assistant Administrator. But then, I am told, so could the second issue.

Acid rain, or more correctly perhaps, acid deposition, has been among the most highly publicized, politically contentious environmental issues of the past few years, and I expect it will continue to be. I am also aware that it is a major concern of this Committee. I am committed to continuing our intensive research on the problem, not in an attempt to delay action but to learn what is needed to craft the most effective response to the problem. I sincerely hope to be able to work with this Committee in looking at the most effective and acceptable means to deal with what we all recognize to be a serious problem. Certainly, it must be clear that this issue has opposing advocates in all quarters, and that unless and until there is accommodation on the part of all, there is not

likely to be an acceptable "solution." I intend to continue this Administration's intensive search for a scientifically defensible basis for decision, and I sincerely hope that my tenure, if confirmed, will see an end to much of the controversy surrounding this issue.

Third, as most of you know, ozone concentrations in our urban areas are violating national ambient air quality standards far more than any other criteria pollutant. At this time we expect that as many as 35 major urban areas in the United States may not meet the 1987 extension deadline for the ozone standard set in 1979 to protect human health and welfare. As you know, the 1977 amendments to the Clean Air Act resulted in the establishment of December 13, 1987, as the extended deadline for the existing standard. An ozone task force has been set up at EPA to help improve air quality in non-attainment areas and to formulate policy and recommendations to address problems in areas where nonattainment may well remain a fact of life. I expect to be deeply involved in this issue, and I hope to work closely with the Committee as we address this problem.

Finally, the Office of Air and Radiation has sometimes been criticized for not paying enough attention to radiation programs. Although I am told that things have improved in the recent past, the concerns of homeowners in the Reading

Prong, Pennsylvania, area are focusing public attention on the potential health effects of low-level radiation. As we begin to deal with the problem of radon, it seems to me imperative that we must be as responsive as possible to the public's need to know what the risks are and what solutions are available.

We must share our knowledge, but in doing so it must be recognized that we are opening the door to the harsh reality that we do not live in a risk-free society. Consequently, I believe - as does the Administrator - that we must put great effort into managing the risks we face. I expect to be actively involved in the many issues facing the Office of Radiation Programs over the next few years. And, indeed, I intend that the Office of Radiation Programs be given the attention that it deserves in the future.

These four air quality concerns are only a sample of the long list of issues I expect to face if confirmed. In fact, if past history is any indication of the future, some of the most difficult problems that are likely to arise tomorrow are probably not being anticipated today by any of us. But I reemphasize my willingness to work closely with the Congress, no matter what air quality issues we have to resolve in the future. Familiarity is said to breed contempt, but in this

case I hope our familiarity with each other breeds a spirit of mutual trust and cooperation so that we can devise the best possible public policy to protect air quality.

Finally, I want the Committee to know that it is not just my experience in government that has brought me to this confirmation hearing. I have had the rare opportunity to catch Rainbow Trout rising to an early morning hatch of mayflies on the North Platte. I have roamed the sage-covered hills of southern Wyoming in search of the wily Pronghorn Antelope, and I have stood in trembling awe as a sow Grizzly and her two cubs ambled fearlessly across the western edge of Yellowstone. These and other experiences like them, perhaps more than anything else, have invested in me a first-hand love of and respect for the natural environment.

If confirmed, I pledge my concern and dedication to the strong environmental leadership that will be needed to help sustain the Air and Radiation programs at the Environmental Protection Agency. I will work actively and closely with this Committee and others affected by the policies and programs managed by the Office of Air and Radiation.

Thank you for this opportunity to appear before you, and I will try to answer any questions you may have.

J. CRAIG POTTER

Craig Potter is presently the Acting Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior. He has been in the Office of the Assistant Secretary since March of 1981. He came to Interior from the Senate Appropriations Committee, where he had been a professional staff member for more than three years. His earliest assignment on Capitol Hill was in 1975 as Chief Counsel for the Committee on Post Office and Civil Service.

Although Craig has broad responsibility to discharge direction and supervision over programs associated with fish, wildlife and park resources of the Nation, he has for some time been intimately associated with efforts to improve implementation of the Endangered Species Act and to preserve wetlands through various Department initiatives. He is a key member of Secretary Hodel's management team responsible for the broad-based environmental program of the Department of the Interior.

Craig is a graduate of the University of Illinois and the University of Wyoming College of Law. Prior to coming to Washington, he practiced law privately in Cheyenne, Wyoming, where he emphasized water law and administrative procedure.

Craig lives in Alexandria, Virginia with his wife, Louise, and his son, Spencer.

Date and Place of Birth:	12/23/43, La Jolla, California
Home Address:	7705 Tauxemont Road, Alexandria, Va. 22308
Home Phone:	(703) 768-7294
Business Address:	Department of the Interior, Washington, D. C. 20240
Business Telephone:	(202) 343-4678
Marital Status:	Married, with one child (age 2)
Health	Excellent

EMPLOYMENT HISTORY

January 1985 to Present — Acting Assistant Secretary for Fish and Wildlife and Parks
Department of the Interior

July 1982 to January 1985 — Principal Deputy Assistant Secretary for Fish and Wildlife and Parks
Department of the Interior

Responsible for full range of duties associated with the development, conservation and utilization of fish, wildlife, recreational, cultural, historic, and park system resources of the Nation. Intimately involved in management, policy formulation, program appraisal, evaluation and supervision of the National Park Service and the Fish and Wildlife Service. Maintain contact and coordinate activities with dozens of groups, including State governments, regional commissions, Members and Committees of Congress, foreign governments, and other Federal agencies that are involved with natural resource programs. Immediately responsible for legislative activities and directly involved in coordination and presentation of Congressional testimony. Responsible for budget development and preparation on behalf of the Assistant Secretary for Fish and Wildlife and Parks. Represents the Department in the coordination with other agencies of marine environmental quality and biological resource programs. As alter ego of the Assistant Secretary, have wide latitude in developing, directing and managing the full gamut of Secretarial activities.

March 1981 to July 1982 — Special Assistant to the Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior

As Special Assistant, performed duties substantially similar to those performed as a Deputy. Although I did function as the Acting Assistant Secretary in this instance, I did not act as his alter ego on a daily basis. Nor did I actually testify at Congressional hearings, or get as much public exposure as does a Deputy Assistant Secretary.

January 1978 to March 1981 — Professional Staff, Senate Appropriations Committee
United States Senate, Washington, D.C.

Minority counsel for Transportation Subcommittee (6/79 - 12/80), and Interior Subcommittee (1/78 - 6/79). Full range of activities associated with jurisdiction of both Subcommittees, including review of agency budget submissions and justifications, program oversight and investigative activities, extensive day-to-day contact with affected agencies, preparation and staffing for Subcommittee budget hearings, drafting of legislation, reports, floor statements, budget materials, reprogramming recommendations and correspondence, and staffing of all phases of Subcommittee work.

June 1977 to January 1978 — Professional Staff, Government Affairs Committee
United States Senate, Washington, D. C.

Minority counsel for the Civil Service and General Services Subcommittee. Transferred to the Subcommittee following Senate reorganization. Substantively, activities were identical to those performed previously on the Post Office and Civil Service Committee.

January 1976 to June 1977 — Chief Counsel, Senate Post Office and Civil Service Committee
United States Senate, Washington, D. C.

Counsel and advisor to Full Committee staff and members. Involved in all phases of Committee activities, including drafting, reviewing and managing legislation and report writing; speech writing and presentation; casework and correspondence; investigative and oversight activities.

1973 to 1976 — Lawyer, Cheyenne, Wyoming

Began general practice of law in March 1973, and was so engaged until spring of 1976. Emphasized administrative practice, small corporate activity, bankruptcy, water law and domestic relations. Did trial work in municipal, State and Federal courts.

1968 to 1970 — Product Engineer, ESB, Incorporated, Denver, Colorado

Responsible for quality control in all phases of manufacture of a complete line of secondary storage batteries in a plant employing about 100 people. Had direct supervisory authority over all hourly personnel and a testing laboratory.

1958 to 1965 Summer Work — Pursued an apprenticeship as an electrician when not in school. Became journeyman electrician in 1966 and continued to pay a large percentage of college and law school expenses working as a part-time electrician from 1966 to 1971.

EDUCATION:

A.B., University of Illinois at Urbana - 1967
Major: Political Science (Pre-Law)
Split Minor: History and Mathematics

J.D., University of Wyoming at Laramie - 1972
Special Emphasis: Legislative draftsmanship, water law, and energy resource development

PUBLICATIONS

"Masks and Men in Upper Volta," Finance. August 1977.

"Transferability of Reclamation Water Rights," article prepared for the Land and Water Law Review. 1971

"Mandate for Leadership," Heritage Foundation, contributor and editor, 1981.

MEMBERSHIPS AND ACTIVITIES

Wyoming State Bar, 1973 - present
Admitted to practice before all Wyoming Courts, the Federal District Court for Wyoming, the 10th Circuit Court of Appeals, and the U.S. Supreme Court. Application pending before the District of Columbia Bar.

Traveled and worked in Southeast Asia as a member of an International YMCA Delegation (1964)

Led U.S. Delegation to RAMSAR International Wetlands Convention in May of 1984.

Currently Vice Chairman of the Environmental Quality Committee of the American Bar Association.

Treasurer of the Tauxemont Community Association and actively involved in local community affairs.

Active member of Christ Episcopal Church, Alexandria, Virginia.

UNITED STATES SENATE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

ROOM 410 DIRKSEN BUILDING WASHINGTON, DC 20510

INFORMATION

REQUESTED OF PRESIDENTIAL NOMINEES

In order to assist the Committee in its consideration of nominations, each nominee is requested to complete the attached Statement For Completion By Presidential Nominees. The Statement is intended to be publicly available. In the event that a nominee asks that a specific answer be kept confidential, he or she should notify the Chairman and Ranking Member.

The original and twenty-five (25) copies of the requested information should be made available to Honorable Robert T. Stafford, Chairman, Committee on Environment and Public Works, U.S. Senate, Washington, DC 20510 (Attn: Staff Director) as soon as possible.

UNITED STATES SENATE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: Potter (Last) James (First) Craig (Middle)

Position to which nominated: Assistant Administrator Air and Radiation, EPA

Date of Nomination: 12/ 10/85

Date of birth: 12/23/43 (Day) (Month) (Year) Place of birth: La Jolla, California

Marital status: Married Full name of spouse: Louise Elizabeth Carter King Potter

Name and ages of children: Spencer Bryant Potter, age 3

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Urbana Junior High	9/56 - 6/58		
Urbana High School	9/58 - 6/62	H.S. Diploma	6/62
Univ. of Illinois	9/62 - 1/67	A.B.	1/67
Univ. of Wyoming	9/67 - 5/68 9/70 - 5/72	J.D.	5/72

Employment record: List all positions held since college, including the title and description of job, name of employer, location, and dates. If you were terminated involuntarily from any position(s), please note the circumstances.

See Attached Sheet

Home Address: 7705 Tauxemont Road
Alexandria, Va. 22308

Home Phone Number: (703) 768-7294

Office Phone Number: (202) 382-7403

J. Craig Potter

EMPLOYMENT HISTORY

On detail to EPA October 1985 - Present

A. Acting Executive Secretary, National Fish and Wildlife Foundation
July 1985 - Oct. 1985: Department of the Interior

Responsible for the day-to-day operation of the National Fish and Wildlife Foundation and its 9-member Board of Directors. The Foundation was created by the President and chartered by the Congress to solicit and accept tax-deductible donations of land, other property, and financial gifts from corporate America and the general public in order to further the activities of the U.S. Fish and Wildlife Service.

B. Acting Assistant Secretary for Fish and Wildlife and Parks
January 1985 - July 1985: Department of the Interior

Responsible for full range of duties associated with the development, conservation and utilization of fish, wildlife, recreational, cultural, historic, and park-system resources of the Nation. Intimately involved in management, policy formulation, program appraisal, evaluation and supervision of the National Park Service and the Fish and Wildlife Service. Maintain contact and coordinate activities with dozens of groups, including State governments, regional commissions, Members and Committees of Congress, foreign governments, and other Federal agencies that are involved with natural resource programs. Immediately responsible for legislative activities and directly involved in coordination and presentation of Congressional testimony. Also responsible for budget development. Represent the Department in the coordination with other agencies of marine environmental quality and biological resource programs. Enjoyed wide latitude in developing, directing and managing the full gamut of Secretarial activities.

C. Principal Deputy Assistant Secretary for Fish and Wildlife and Parks
July 1982 - January 1985: Department of the Interior

In addition to being the alter ego of the Assistant Secretary, performed duties described above under Acting Assistant Secretary.

D. Special Assistant to the Assistant Secretary for Fish and Wildlife and Parks
March 1981 - July 1982: Department of the Interior

As Special Assistant, performed duties substantially similar to those performed as Deputy and as Acting Assistant Secretary. Although I did function as the Acting Assistant Secretary in this instance, I did not act as his alter ego on a daily basis. Nor did I actually testify at Congressional hearings, or get as much public exposure as does a Deputy Assistant Secretary.

E. Professional Staff, Senate Appropriations Committee
January 1978 - March 1981: United States Senate, Washington, D.C.

Minority counsel for Transportation Subcommittee (6/79 - 12/80), and Interior Subcommittee (1/78 - 6/79). Full range of activities associated

with jurisdiction of both Subcommittees, including review of agency budget submissions and justifications, program oversight and investigative activities, extensive day-to-day contact with affected agencies, preparation and staffing for Subcommittee budget hearings, drafting of legislation, reports, floor statements, budget materials, reprogramming recommendations and correspondence, and staffing of all phases of Subcommittee work.

F. Professional Staff, Government Affairs Committee
June 1977 - January 1978: United States Senate, Washington, D.C.

Minority counsel for the Civil Service and General Services Subcommittee. Transferred to the Subcommittee following Senate reorganization. Substantively, activities were identical to those performed previously on the Post Office and Civil Service Committee.

G. Chief Counsel, Senate Post Office and Civil Service Committee
January 1976 - June 1977: United States Senate, Washington, D.C.

Counsel and advisor to Full Committee staff and members. Involved in all phases of Committee activities, including drafting, reviewing and managing legislation and report writing; speech writing and presentation; casework and correspondence; investigative and oversight activities.

H. Lawyer: Cheyenne, Wyoming 1973 - 1976

Began general practice of law in March 1973, and was so engaged until spring of 1976. Emphasized administrative practice, small corporate activity, bankruptcy, water law and domestic relations. Did trial work in municipal, State and Federal courts.

Employment record—Continued

Attached

Honors and awards: List significant scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Outstanding Service Award
(Department of the Interior)

Memberships: List significant memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Office held (if any)	Dates
Boy Scouts of America	Member	1955-1965
University YMCA	Cabinet Member	1962-1964
Beta Theta Pi (Sigma Rho Chapter)	Member	1962-Present
Goodwill Industries	Board Member	1/75-11/75
Wyoming State Bar		1973-Present
American Bar Association (Natural Resources Section)	Chairman, Environmental Quality Comm.	5/84-Present

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Qualifications: State fully your qualifications to serve in the position to which you have been named.

See attached sheet

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

Yes

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your current or any previous employer, business firm, association or organization.

No

3. Has anybody made a commitment to you for a job after you leave government?

No

4. (a) If you have been appointed for a fixed term, do you expect to serve the full term?

Yes

After more than 10 years of experience in government, I consider myself to be a professional manager. Throughout my government career, I have managed complex, people-oriented programs. I consider myself to be dedicated to and experienced in formulating policy and advising government leaders at the highest levels. I have had extensive experience at developing and evaluating programs, developing and reviewing regulatory activities, enforcing statutory and regulatory standards, and interacting at all levels within and outside of government where these activities impact. As the principal Deputy Assistant Secretary for Fish and Wildlife and Parks at the Department of the Interior for 3 years, and then as Acting Assistant Secretary, I had direct responsibility for programs associated with the development, conservation and utilization of fish, wildlife, recreation, historical, and national park system resources of the Nation. In discharging these responsibilities, I:

maintained contact and coordinated activities with many groups having interests in and influence upon natural resource and environmental programs. Such groups included State governments, regional commissions, members and committees of the U.S. Congress, foreign governments, and other Fedeal agencies. I acted as an active participant in policy development and in the communication of such policy to these groups.

In addition, I provided management leadership for programmatic activities affecting the environment, operation and maintenance of fisheries, wildlife, recreation, historic and natural resources comprising the National Wildlife Refuge, National Park, and the National Wild and Scenic River and Trail Systems, involving land use and resource management.

I was also immediately responsible for legislative activities related to these program areas and worked to develop new proposals, to secure appropriate clearances, to coordinate presentations to the Congress, including testimony, and to otherwise advance the Department's legislative objectives.

Prior to my tenure at Interior, I had further experience as a professional staff member of the U.S. Senate Appropriations Committee and the U.S. Senate Governmental Affairs Committee. These experiences, in particular, should enhance my ability to interact with the Congress. I am also trained as a lawyer and practiced that profession before coming to Washington in 1975.

(b) If you have been appointed for an indefinite term, do you have any known limitations on your willingness or ability to serve for the foreseeable future?

N/A

(c) If you have previously held any Schedule C or other appointive position in the Executive branch, irrespective of whether the position required Congressional confirmation, please state the circumstances of your departure and its timing.

N/A

Financial Statement:

1. Attach a copy of your Executive Personnel Financial Disclosure Report (SF 278).

2. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services and firm memberships or from former employers, clients, and customers. Amounts should be indicated by the categories established for reporting income on Form SF 278, Schedule A.

1. Attached

2. None

3. Are any assets pledged? (Add schedule).

No

4. Are you currently a party to any legal action?

No

5. Have you filed a Federal income tax return for each of the last 10 years? If not, please explain the circumstances.

Yes

SF 278 Rev. 1/95
FPM Chapter 734
U.S. Office of Personnel Management

Financial Disclosure Report

Form Approved
OMB No. 3209-0002

Reporting Status (Check Appropriate Box)		Agency Use Only	OGE Use Only	Date of Appointment, Candidacy, Election or Nomination (Mo., Day, Yr.)	Termination Date (If Applicable) (Month, Day, Year)
☐ Incumbent	☒ New Entrant, Nominee, or Candidate ☐ Termination Filer			December 10, 1985	

Reporting Individual's Name	Last Name: Potter	First Name and Middle Initial: James Craig
Position for Which Filing	Title of Position: Assistant Administrator for Air and Radiation	Department or Agency (If Applicable): Environmental Protection Agency
Location of Present Office	Address (Number, Street, City, State and ZIP Code): 401 M Street S.W., Washington, D.C. 20460	Telephone No. (Include Area Code): On detail to E.P.A. (202) 382-7403
Position(s) Held With the Federal Government During the Preceding 12 Months (If Not Same as Above)	Title of Position(s) and Date(s) Held: 7/85-Present: Acting Exec. Secretary: Fish & Wildlife Foundation 1/85-7/85: Acting Asst. Secretary for Fish and Wildlife and Parks	
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination: Senate Committee on Environment and Public Works	Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☒ No

Certification	Signature of Reporting Individual	Date (Month, Day, Year)
I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge and belief.	[signature]	12/12/85
Other Review (If desired by agency)	Signature of Other Reviewer	Date (Month, Day, Year)
Agency Ethics Official's Opinion	Signature of Designated Agency Ethics Official/Reviewing Official	Date (Month, Day, Year)
The information contained in this report discloses no conflict of interest under applicable laws and regulations.		
Office of Government Ethics Use Only	Signature	Date (Month, Day, Year)

Comments of Reviewing Officials (If additional space is required, use the reverse side of this sheet)

(Check box if comments are continued on the reverse side) ☐

Reporting Periods

Incumbents: Complete Schedules A, B, C, and Part I of D. The reporting period is the preceding calendar year except for Part II of Schedule C and Part I of Schedule D where you must also include any positions held or agreements or arrangements made from the beginning of the filing year until the date you file.

Termination Filers: Complete Schedules A, B, C, and Part I of D. The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination.

Nominees, New Entrants and Candidates for President and Vice President: Complete Schedules A, C, and D. (Candidates do not file Part II of Schedule D.)

- **Schedule A**—The reporting period for Income (BLOCK C) and Transactions Test (BLOCK D) is the preceding calendar year and the current calendar year up to the date of filing. Value assets in BLOCK B as of any date you choose that is within 31 days of the date of filing.
- **Schedule C, Part I (Liabilities)**—The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.
- **Schedule C, Part II (Agreements and Arrangements)**—Show any agreements or arrangements as of the date of filing.
- **Schedule D**—The reporting period is the preceding **two** calendar years and the current calendar year up to the date of filing.

PREVIOUS EDITION USABLE

278-100

NSN 7540-01-070-8444

Form Approved
OMB No. 3209-0060

5 CFR 2634
Part Chapter 734
U.S. Office of Personnel Management

Reporting Individual's Name	Assets and Income	Page Number	2	Schedule A
Potter, James Craig				

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal business and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the **actual amount** of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Incumbents and Termination Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

BLOCK A Assets & Income Sources	BLOCK B Valuation of Assets								BLOCK C Income																		BLOCK D Transactions Test	
	Category of Value (X)								Type of Income (X)							Category of Amount of Income (X)											If yes, complete Schd. B Part I for those assets including those sold for a loss.	
Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐	None (or less than $1001)	$1,001-$8,000	$8,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify Type)	None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$1,000,000	Over $1,000,000	Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	YES	NO
B (DC) Examples: X Y Z Common				X				X									X									X	
Doe Jones & Smith, Hometown, USA			X											ptnrshp income									$50,000			
1 House: 4A E. Mason Avenue Alexandria, Virginia 22308						X			X										X								
2 ERC International, Inc.		Sold 5/1985						X							X												
3 Allied Capital Corp.			X					X								X											
4 Avon Products, Inc.		X						X								X											
5 Burnup & Sims, Inc.			X					X								X											
6 Founders Bank of New Haven		Sold 9/1985						X							X												
7 Burnup & Sims (Bonds)		X								X						X											
8 Peninsula Resources (Bonds)		Sold 12/1985								X					X												
9 Washington State PP Supply System (Bonds)			X							X						X											
10 Certificate of Accrual on Treasury Interests (Custodial Acct)		X								X					X												

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CONTINUED

Form Approved
OMB No. 3209-0007

5U.S.C. (Ann. 1989)
Office of Personnel Management
U.S. Office of Personnel Management

Reporting Individual's Name	Continued from previous page **Assets and Income**	Page Number	3	Schedule A
Potter, James Craig				

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal business and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the **assets** and other sources of income listed in BLOCK A. You must report the **actual amount** of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the **assets**, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Incumbents and Termination Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

BLOCK A Assets & Income Sources	BLOCK B Valuation of Assets	BLOCK C Income																										BLOCK D Transactions Test	
Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐	Category of Value (X)	Type of Income (X)							Other (Specify Type)	Category of Amount of Income (X)										Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	If yes, complete Schd. B Part I for those assets including those sold for a loss.	
	None (or less than $1001)	$1,001 - $6,000	$6,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	Over $250,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust		None (or less than $101)	$101 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	Over $100,000			YES	NO
8 or DC Examples: X Y Z Common / Doe Jones & Smith, Hometown, USA		X		X				X						partnership income			X						$50,000		X	
11 McDermott International Inc		Sold 5/1995						X								X											
12 Central Vermont P.S. Corp		Sold 8/1994						X								X											
13 Atlanta Gas Light Co.		Sold 12/1994						X								X											
14 Middle South Utilities		Sold 2/1995						X								X											
15 Freedom Regional Bank Fund			X					X							X												
16 Travelers Real Estate Investment Trust		X						X								X											
17 Fidelity Union Life Ins. Supplemental Retirement Fund			X							X						X											

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SF 278 (Rev. 1/88)
Part Chapter 73
U.S. Office of Personnel Management

Form Approved
OMB No. 3209-0001

Reporting Individual's Name
Potter, James Craig

Page Number	4	Schedule B

Part I
Transactions

Incumbents and Termination Filers only: Report any purchase, sale or exchange by you, your spouse or dependent child during the reporting period of any real property, stocks, bonds, commodities futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss. Do not report a transaction involving property used solely as your personal residence, or a transaction between you, your spouse or your dependent child.

NONE ☐

S or DC	Example	Identification of Asset	Type of Transaction (X) Purchase	Sale	Exchange	Date (Mo., Day, Yr.)	Amount of Transaction (X) $1,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000
	Example	X Y Z Common	X			2/1/83		X			
1											
2											
3											
4		NOT APPLICABLE — NOMINEE									
5											
6											

Part II
Gifts, Reimbursements and Travel Expenses

Incumbents and Termination Filers only:
Report the source, a brief description and the value of: (1) in-kind gifts of transportation, lodging, food or entertainment received from one source totaling $250 or more unless received as personal hospitality at the donor's personal or family residence; (2) other gifts received from one source totaling $100 or more in value; and (3) cash reimbursements of $250 or more received from one source. Exclude gifts and reimbursements received by your spouse that were given totally independent of their relationship to you. **Exclude** transportation, lodging, food and reimbursements from the U.S. Government. For (1) and (2), **exclude** gifts from relatives and **exclude** gifts of $35 or less when aggregating them for the total from one source. See instructions for further exclusions.

NONE ☐

S	Example	Source (Name and Address)	Brief Description	Value
	Example	Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/83	$500
	Example	Nat'l Assn. of Rock Collectors, NY, NY	Leather briefcase for retiring president	$125
1				
2				
3		NOT APPLICABLE — NOMINEE		
4				
5				
6				

PREVIOUS EDITION USABLE

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SF 278 (Rev. 1-80)
Part Chapter 734,
U.S. Office of Personnel Management

Form Approved
OMB No. 3209-0087

Reporting Individual's Name

Potter, James Craig

Page Number	5	Schedule C

Part I
Liabilities

All Filers: Report liabilities over $10,000 owed to any one creditor at any time during the reporting period by you, your spouse or dependent child. Check the highest amount owed during the reporting period. **Exclude** a mortgage on your personal residence unless it is rented out, loans secured by automobiles, household furniture or appliances, and liabilities owed to relatives. See instructions for revolving charge accounts.

NONE ☐

	Creditor (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (X) $10,001 to $15,000	$15,001 to $50,000	$50,001 to $100,000	$100,001 to $250,000	Over $250,000
S or DC	Examples: First District Bank, Washington, DC	Mortgage on rental property, Rehoboth Beach, Delewere	1981	13%	25 yrs.			X		
	John Jones, 123 J St., Washington, DC	Promissory note	1979	10%	on demand	X				
1	B.F. Saul Mortgage Co., Bethesda, Maryland	Mortgage on rental house, Alexandria, Va	1976	8-3/4	30 yrs			X		
2	Dominion Bank of Northern Virginia, Natl. Association Vienna, Virginia	2nd Deed of Trust on rental house 4A, E. Mason, Alexandria, Va.	1985	12	15 yrs			X		
3										
4										
5										
6										

Part II
Agreements Or Arrangements

All Filers: Report your agreements or arrangements for future employment, leaves of absence, continuation of payment by a former employer (including severance payments), or continuing participation in an employee benefit plan. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

NONE ☒

	Status and Terms of any Agreement or Arrangement	Parties	Date (Mo., Yr.)
Example:	Pursuant to partnership agreement, will receive capital account & partnership share calculated on service performed through 11/83	Doe Jones & Smith, Home town, USA	7/75 ptnership agrmt

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6. Has the Internal Revenue Service ever audited your Federal tax return? If so, what resulted from the audit?

No
N/A

Potential conflicts of interest:

1. Describe any financial or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest, or the appearance of conflicts of interest, with the position to which you have been nominated.

A potential conflict involving ownership of Washington State Public Power Supply System (bonds) has been resolved through issuance by the Agency's Ethics Officer of a waiver under USC § 208(b)(1). (document attached)

3. Describe any business relationship, dealing or financial transaction (other than taxpaying) which you have had during the last 10 years with the Federal Government, whether for yourself or relatives, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest, or an appearance of conflict of interest, with the position to which you have been nominated.

None

4. Explain how you will resolve any potential conflict of interest, or appearance of a conflict of interest, that may be disclosed by your responses to the above items.

I will take whatever action is advised by EPA's Ethics Office and the Office of Government Ethics to redress any conflict.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 13 1985

OFFICE OF
GENERAL COUNSEL

Mr. David H. Martin, Director
Office of Government Ethics
P.O. Box 14108
Washington, D.C. 20044

Dear Mr. Martin:

As required by 5 C.F.R. §734.604(c), I have reviewed the Executive Personnel Financial Disclosure Report submitted by James Craig Potter in connection with his nomination as Assistant Administrator for Air and Radiation of the Environmental Protection Agency.

Mr. Potter and his wife hold Washington State Public Power Supply System bonds worth approximately $9150, and I have granted a waiver under 18 U.S.C. §208(b)(1) to permit Mr. Potter to take part in rulemaking or policy matters which affect such utilities. A copy of this waiver is enclosed. In view of this waiver, I have determined that the report is complete and discloses no likely conflict of interest under applicable statutes and regulations. Accordingly, I have signed and dated the enclosed report. I have also provided the nominee with a briefing on ethics and standards of conduct and the applicable statutes and regulations.

A statement of the organization and functions of the Office of Air and Radiation is also enclosed. Please call me at 475-8064 if you have any questions.

Sincerely,

Gerald H. Yamada
Deputy General Counsel
Designated Agency Ethics Official

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
GENERAL COUNSEL

DEC 13 1985

MEMORANDUM

SUBJECT: Waiver Under 18 U.S.C. §208(b)(1)

FROM: Gerald H. Yamada
Deputy General Counsel
Designated Agency Ethics Official (LE-130)

TO: James Craig Potter
Assistant Administrator Designate for
Air and Radiation (ANR-443)

The SF 278, Executive Personnel Financial Disclosure Report, which you submitted in connection with your nomination as Assistant Administrator for Air and Radiation, indicates that you and your wife own bonds of the Washington State Public Power Supply System (WSPPSS). I understand that the current value of these bonds is approximately $9150.

As Assistant Administrator for Air and Radiation, it is likely that you will be called upon to make decisions and recommendations which affect the financial interests of utilities. Under 18 U.S.C. §208(a) federal officials are prohibited from participating "through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise" in a "particular matter" which affects their or their spouses' financial interests. The term "particular matter" includes a policy or rulemaking matter which distinctively affects an industry, such as a New Source Performance Standard, as well as a matter which involves an entity as a specific party, such as a permit or an enforcement proceeding.

However, under 18 U.S.C. §208(b)(1) and 40 C.F.R. §3.301 I am authorized to waive the prohibition of 18 U.S.C. §208(a) where the financial interest is "not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect." In this case, I have no difficulty determining that your and your wife's financial interest in EPA matters affecting utilities is "not so substantial," and a waiver is hereby granted. It is very unlikely that such an EPA decision would significantly affect the security or value of your WSPPSS bonds or the interest earned.

Consistent with the usual EPA practice, this waiver applies only to rulemaking or policy matters which affect the industry of which WSPPSS is a part, and 18 U.S.C. §208(a) continues to bar your participation in any EPA matter which involves WSPPSS as a specific party. Moreover, this waiver will cease to apply if the value of your and your wife's WSPPSS bonds should ever exceed $10,000.

cc: Office of Government Ethics

5. Explain how you will comply with conflict of interest laws and regulations applicable to the position for which you have been nominated. Attach a statement from the appropriate agency official indicating what those laws and regulations are and how you will comply with them. For this purpose, you may utilize a statement by the relevant agency Ethics Officer.

Based on extensive conversations with Agency Ethics Officials, I believe that I am currently in compliance with those laws and regulations. I intend to maintain compliance through regular consultation with these officials. Attached is a current Guidance on Ethics and Conflicts of Interest applicable to the Environmental Protection Agency. *

Political affiliation and activities: List all memberships and offices held in, or financial contributions (in excess of $1,000), and services rendered to any political party or election committee during the last 10 years.

None

Published writings: List the titles, publishers and dates of any books, articles, or reports you have written. (Please list first any publications and/or speeches that involve environmental or related matters.)

"Masks & Men in Upper Volta" Finance August 1977 *

"Transferability of Reclamation Water Rights" Article prepared for Land and Water Law Review 1971

"Mandate for Leadership" Heritage Foundation Contributor and Editor, 1981

List of speeches attached.

*The attachment referred to has been retained in committee files.

J. Craig Potter

SPEECHES

4/13/83	Remarks on Wetlands National Advisory Committee on Oceans and Atmosphere Washington, D.C.
4/28/83	Public Policy Workshop Hofstra University Hempstead, N.Y. Speech on Land Use Policy
5/13/83	Natural Resource Issues of the 80's Brookings Institution's Conference of Business Executives Washington, D.C.
6/7/83	Recreation Use in National Parks International Snowmobile Industry Association Indianapolis, Indiana
2/23/84	Balancing Natural Resource Needs with Development Needs Colorado Water Congress Denver, Colorado
10/3/84	Resource Management and Recreation Use Conference on Cultural Resource Management Electric Utility Industry Hartford, Connecticut
1/16/85	Coastal Barrier Resources Management "Cities On The Beach" Conference Virginia Beach, Virginia
3/24/85	Historic Preservation Conference of State Historic Preservation Officers Washington, D.C.
4/10/85	Protection of Chesapeake Wetlands Chesapeake Bay Wetlands Conference Easton, Maryland

Additional Matters:

1. If there is any additional information which you believe may be pertinent to the Members of the Committee in reaching their decisions, you may include that here.

2. Do you agree to appear before all Congressional Committees which seek your testimony?

Yes

3. Having completed this form, are there any additional questions which you believe the Committee should ask of future nominees?

No

AFFIDAVIT

STATE OF VIRGINIA

CITY OF ALEXANDRIA , to wit:

J. CRAIG POTTER) ss, being duly sworn, hereby states that he/she has read and signed the foregoing Statement for Completion by Presidential Nominees including the Financial Statement and that the information provided therein is, to the best of his/her knowledge and belief, current, accurate, and complete.

J. Craig Potter

Subscribed and sworn before me this 4th day of Feb. , 1986 .

Notary Public

My commission expires: October 29, 1989

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
AIR AND RADIATION

February 12, 1986

Honorable Robert T. Stafford
Chairman, Committee on
Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I would like to thank you for taking such quick action on my confirmation as Assistant Administrator for Air and Radiation at the Environmental Protection Agency. I look forward to working with you, the committee and your staff in the comming months.

Enclosed for the record is a copy of my response to the questions that were asked in connection with my confirmation.

Sincerely,

J. Craig Potter
Assistant Administrator Designee
for Air and Radiation

ANSWERS TO OMB QUESTIONS

SENATOR FRANK R. LAUTENBERG
J. CRAIG POTTER CONFIRMATION HEARING

Q.1: Do you believe that under the President's executive orders (#12291 & 12498) EPA must defer issuing a proposed or final rule or regulatory agenda until EPA satisfies any objections by OMB?

A.1: No. Both executive orders already state that they are to be followed to the extent permitted by law. However, Executive Orders 12292 and 12498 provide a process to receive the benefit of consultations within the Executive Branch. That process was designed to assist in understanding the full scope of implications that EPA and other regulations have on national policy. To the extent that valid issues are raised during that process, such issues should be considered. At the same time, EPA is responsible for administering the environmental statutes and the final decision on any EPA regulation rests with the EPA Administrator.

ANSWERS TO OMB QUESTIONS

SENATOR FRANK R. LAUTENBERG
J. CRAIG POTTER CONFIRMATION HEARING

Q.2. What has caused the hold-up to EPA issuance of the stationary internal combustion engine new source performance standard, under the Clean Air Act, for which the statutory deadline expired in August 1982? How will you prevent further delays in promulgation of standards? EPA capitulated to OMB's vetoes of this rule in August 1981 and August 1983 and OMB review of this rule has been pending since July 1981? Will you accept OMB's definition of the statutory term "significant" source? Are OMB's comments to EPA contained in a publicly available EPA file? Will you make OMB's comments on this rule publicly available?

A.2. Control of stationary internal combustion engines involves complex issues and trade-offs. Potential NOx reductions result in increased CO emissions, increased operating costs and net energy penalties. Also, the development of control technologies (e.g., catalysts, staged combustion engines) for natural gas as well as diesel engines that will reduce NOx without increasing CO emissions has changed in the last few years. This new information has contributed to the delay and is a major reason for the Agency's decision to continue to review this rule.

The decision to review this standard further was based on OMB concerns put forth during its review as well as the issues pertaining to this NSPS described above. The NSPS was returned from OMB to the Agency for reconsideration in April of 1983. That completed OMB's review.

I am unaware of any OMB definition of significant source with regard to this NSPS.

As a matter of Agency policy, written OMB comments are available to the public. I am enclosing copies of the comments pertaining to internal combustion engines.

Enclosure 1

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

APR 28 1983

Mr. Joseph A. Cannon
Associate Administrator for
Policy and Resource Management
Environmental Protection Agency
Washington, D.C. 20460

Dear Joe:

On November 4, 1982 we received a final rule, "Standards of Performance for New Stationary Sources - Stationary Internal Combustion Engines," for review under Executive Order 12291. As you know, we have conducted an extensive review of this rule and discussed the rule with EPA staff on several occasions. Based on this review, we believe the rule is inconsistent with Section 2 of Executive Order 12291, and are returning it to you for reconsideration.

On July 23, 1979 the Environmental Protection Agency published a notice proposing to regulate NO_x emissions for all staticnary internal combustion (IC) engines. After analysis of comments to the proposal, however, EPA has concluded that regulation of gas fueled IC engines is not appropriate at this time because of the significant increase in carbon monoxide (CO) emissions under available control measures. Consequently, EPA has decided in its final rule to regulate only diesel and dual-fueled engines.

EPA estimates that about 40 additional diesel IC engines would be regulated each year under this rule. As a result, the draft final rule would reduce 1987 NO_x emissions by 22,000 tons (and would increase CO emissions by 9,900 tons). This would be accomplished at an annual cost of $10.7 million, a removal cost for NO_x of $480 per ton (See enclosed chart). There is no information on the benefits directly associated with this level of NO_x control. However, IC engines generally have short stacks so that their emissions most directly affect the immediate area. EPA could not tell us exactly where diesel IC engines are located, but acknowledged that most are probably found in remote drilling sites where populations would be limited.

Although there is only limited information on the costs for NO_x removal in other regulations, it appears that $480 per ton is relatively high. The NSPS regulating stationary gas turbines was estimated to remove 190,000 tons/year at only $58 per ton. For mobile sources, the 1980-1981 2.0/1.0 grams per mile standard was estimated to have cost $250 per ton for NO_x removal, while less

stringent NO_x standards adopted during the 1970's appear to have had costs of less than $100 per ton. The 1979 notice proposing to regulate all IC engines would have removed 160,000 tons per year of NO_x at $341 per ton. In deciding not to regulate gas-fueled IC engines, EPA is foregoing a reduction in 1987 NO_x emissions of 138,000 tons at a removal cost of $320 per ton. By comparison with these other actions, then, this rule would remove a relatively limited amount of NO_x at a relatively high cost.

In addition, we are concerned about the potential competitive effects of regulating a small segment of a large, unregulated market. EPA maintains that gas and diesel engines do not compete with each other. However, it appears that some gasoline powered engines may compete with diesels; for example, both may be used in remote areas. Furthermore, some evidence indicates that the rule may cause competitive imposition within the diesel engine class between large and medium bore engines (the standard would regulate only large bore engines). We believe EPA has not adequately explored the potential competitive impacts of its standard.

Finally, the draft final rule anticipates the development of NO_x standards for gas-fired IC engines in the next several years. We think EPA should defer regulating diesel IC engines until it develops NO_x standards for the much broader class of gas-fueled engines.

Overall, we have concluded that the draft rule does not meet the Executive Order's requirements that regulatory objectives be chosen to maximize the net benefits to society. If you have any questions concerning our decision in this case, please do not hesitate to call.

Sincerely,

Christopher DeMuth
Administrator for Information
and Regulatory Affairs

Enclosure

IC Engines - NSPS

	Diesel Only (Final Rule)	Gas Only	Diesel & Gas (Proposed 7/79)
Cost of NOx Removal	$479/ton[a/]	$319/ton[a/]	$341/ton[a/]
Total Annual Cost = NOx removal (5th year)	$ 10.7m	$ 21.3m	$ 32m
△Pollutant (Tons/Yr)			
NO_x	- 22,000	- 138,000	- 160,000
CO	+ 9,900	+ 310,000	+ 320,000
HC	- 300	+ 5,300	+ 5,000

a/ These figures are obtained by adding to the Total Annual Cost (as estimated by EPA in its rulemaking) an additional sum equal to the estimated valuation of increases in CO and HC. CO is valued at $41/ton; HC at $1900/ton. Thus Cost NO_x removal = $\frac{\text{Total Cost} + \$41\triangle CO + \$1900\triangle HC}{\triangle NO_x}$

Enclosure 2

Responses to OMB Comments of April 28, 1983

1. OMB Comment

I.C. engines have short stacks so that their emissions most directly affect the immediate area and most new diesel engines will be located in rural areas where populations would be limited.

EPA Response

First, it should be noted that, although the majority of diesel and dual fuel engines will be located in rural areas, not all of them will be. Diesel and dual fuel engines used on pipelines or for electrical generation can be located in urban areas.

Even if all I.C. engines were located in rural areas, Section 111 of the Clean Air Act, which provides the Agency with the authority to establish new source performance standards (NSPS), requires the Administrator to promulgate a listing of major stationary sources for which standards of performance shall be promulgated. Such a listing was promulgated in the Federal Register August 21, 1979 (44 FR 49222). Stationary internal combustion (I.C.) engines is listed ninth on a list of 59 major source categories. In requiring the Administrator to promulgate such a list, the Clean Air Act makes no distinction between categories in rural areas and urban areas. Therefore, the fact that the majority of I.C. engines are located in rural areas does not provide a legal basis for removing I.C. engines from the list of major sources.

Also, Section 111 requires that the standards required to be promulgated for the list of major sources be based on the best technological system of continuous emission reduction which (taking into consideration cost, nonair quality health and environmental impact, and energy requirements) the Administrator determines has been adequately demonstrated. Rural location of an engine does not create an unreasonable adverse economic or energy impact associated with the use of the best technological system of continuous emission reduction, nor does the rural location of the diesel or dual fuel engine create a technological reason for not applying the best system of control. Therefore, there is no reason based on location that is consistent with Section 111 of the Clean Air Act for not establishing a standard for diesel and dual fuel engines.

In addition, one of the main goals of the NSPS program is to prevent the degradation of air quality throughout the Nation. Allowing new diesel and dual fuel engines to be installed without NO_x emission control is contrary to the attainment of this goal. The NO_x emissions from a typical uncontrolled diesel engine are about 500 tons per year. (Note: A major source is defined as having at least 100 tons per year of emissions.) Considering that in many instances there are two or more diesel engines located together, the uncontrolled emissions from stationary diesel engines can have a significant adverse impact on air quality.

Consequently, we do not feel that the possibility of the majority of diesel and dual fuel engines being located in rural areas is cause for not promulgating an NSPS for this source category.

2. OMB Comment

The cost effectiveness associated with the diesel and dual fuel engine NSPS ($480 per ton) is relatively high when compared to the gas turbine NSPS ($58 per ton) and the mobile source 2.0/1.0 gram per mile standard ($250 per ton). Also, in comparison with the amount of NO_x emissions that would be reduced if natural gas fired I.C. engines were regulated at this time (138,000 tons at $320 per ton), the diesel engine NSPS would remove a relatively limited amount of NO_x emissions (22,000 tons) at a relatively high cost ($480 per ton).

EPA Response

A cost effectiveness of $480 per ton is lower than the cost effectiveness of many NSPS for other pollutants and we consider it reasonable.

OMB compared the cost effectiveness of the I.C. engine NSPS to the cost effectiveness of a mobile source standard, which they stated to be $250 per ton of NO_x removal. The cost effectiveness for mobile sources actually ranges from about $275 per ton to about $900 per ton, depending on the category of mobile source (light duty vehicle, heavy duty diesel truck, gasoline light duty truck, etc.). The cost effectiveness of controlling NO_x emissions from stationary diesel and dual fuel engines is, therefore, in the same range as the cost effectiveness of controlling NO_x emissions from mobile sources.

The cost effectiveness of controlling NO_x emissions from gas turbines is about $58 per ton as stated by OMB. However, the fact that one source category can be controlled for less dollars per ton than another source category does not make it unreasonable to control the higher cost source category. In this case, as stated earlier, we consider the $480 per ton necessary to control diesel and dual fuel engines reasonable.

OMB has again questioned the significance of the 22,000 tons of NO_x reduction achieved by this standard at a cost effectiveness of $480 per ton when compared to the 138,000 tons of NO_x emissions that would be reduced at a cost of $320 per ton if gas and gasoline engines were covered by an NSPS. Gas and gasoline engines were removed from the standard following proposal due to the large CO emissions increase (309,000 tons) associated with the NO_x decrease for these engines.

We believe that 22,000 tons is in itself a significant reduction in NO_x emissions. It is difficult to achieve significant NO_x emission reductions from stationary sources because NO_x reduction techniques, in many cases, involve combustion modifications rather than add-on controls. Only relatively small emission reductions can be achieved from each source for which controls are available. For example, the largest source of emissions is boilers and

the NSPS which applies to them, which is based on best demonstrated controls, reduces emissions by only about 30 percent. There are other sources of NO_x (such as cement plants and other process combustion sources) for which controls are not available and no NSPS apply. In contrast, controls applicable to diesel and dual fuel engines reduce emissions by about 40 percent and the associated 22,000 tons reduction is a large part of potentially achievable NO_x emission reduction. In other words, the fact that a standard is not being promulgated for gas engines does not reduce the importance of promulgating a standard for diesel and dual fuel engines, nor does the fact that the cost effectiveness of controlling NO_x emissions from gas and gasoline engines is lower than the cost effectiveness of controlling diesel and dual fuel engines make the regulation of diesel and dual fuel engines unreasonable.

3. OMB Comment

Gasoline powered engines, which are not now covered by the I.C. engine NSPS, may compete with diesels since both may be used in rural areas.

EPA Response

As OMB stated, both diesel and gasoline engines can be used in rural areas. Gasoline engines, however, are generally not built in the large-bore category (>350 cubic inch displacement per cylinder), which is the size covered by the NSPS. In the size range that gasoline engines are built, they are less fuel efficient than the large diesel engines, even when the diesel engine is controlled as required by the NSPS. Also, on oil pipelines, the diesel engine pumping stations in many cases have equipment capable of refining the crude oil being pumped into diesel fuel so that the diesel engines can get its fuel supply directly from the pipeline. The type of fuel available is one of the main criteria used in selecting an engine in a rural location. Consequently, the competition between gasoline and diesel engines is nonexistent and the NSPS will have no impact on this situation.

4. OMB Comment

Some evidence indicated that the standard may cause competitive inequities within the diesel engine industry between large- and medium-bore engines.

EPA Response

This comment probably resulted from a letter sent by General Motors (GM) to the Emission Standards and Engineering Division (not attached due to confidentiality). The OMB was sent a copy of this letter by General Motors. In this letter GM expressed concern that, due to the NSPS, their Electro-Motive Division (EMD) might suffer sales losses of large-bore diesel engines used for land drilling to medium-bore diesel engines (not covered by NSPS).

The control technique that would be used on EMD engines to meet the standard is retarding of the ignition, which results in a fuel penalty. For an EMD engine to meet the standard, retarding the ignition would have to be

applied to the extent that about a 5 percent fuel penalty would result. With this amount of fuel penalty, the fuel efficiency of the large-bore EMD engine would still be better than a medium-bore engine.

GM also stated that retarding the ignition could increase cam shaft wear and carbonaceous material buildup in the engine, both of which could increase maintenance. GM made a similar comment following proposal of this NSPS. In that comment, however, GM stated that retardation of fuel injection, "while very simple to achieve and very effective in reducing NO_x emissions," would take 3 years to implement and to work out the maintenance problems. However, during development of this standard, there was no evidence that retarding of the ignition to the extent generally necessary to meet this standard would cause any increase in maintenance for diesel engines. Also, GM in their latest letter generally states that there could be a maintenance increase, not that there would be an increase. In any event, due to the extremely long OMB review, it has now been nearly 4 years since this standard was proposed (July 23, 1979) giving GM, by their own estimates, ample time to implement this control technology.

It should also be noted that to give the medium-bore engine a competitive advantage, retarding the ignition would have to increase the maintenance of a large-bore diesel engine to such an extent that it would exceed the additional maintenance necessary when using two or three medium-bore engines in place of a large-bore engine. As already stated, there is no evidence that this situation would occur.

GM also stated in their letter that a certain medium-bore engine manufacturer would be their main competitor in the land drilling market place. The Detroit Diesel Allison Division of GM manufactures medium-bore diesel engines of the same size as the medium-bore manufacturer that would be EMD's primary competitor. Therefore, even if the Electro-Motive Division of GM were to lose sales in the land drilling market place, and again there is no indication they would, some or all of these lost sales could be regained by additional medium-bore engine sales to the land drilling market place by the Detroit Diesel Allison Division of GM.

ANSWERS TO OMB QUESTIONS

SENATOR FRANK R. LAUTENBERG
J. CRAIG POTTER CONFIRMATION HEARING

Q.3: What has caused the hold-up to EPA issuance of arsenic standard, under the Clean Air Act, for which the statutory deadline expired more than two years ago? How long has OMB review of this rule been pending? What are your views of this delay and of OMB's position? EPA capitulated to OMB's veto of the rule in 1985. What will you do to assure prompt issuance of a strong final rule in the fact of EPA's publicly available EPA file? Will you make OMB's comments on this rule publicly available?

A.3: EPA submitted the final arsenic package to OMB on February 14, 1985. We have worked with OMB staff since that time on issues and questions they have raised concerning the rule. OMB has not "vetoed" this rule, and we will continue to work with OMB to get this rule promulgated as early as possible.

I am told that EPA has received no written comments from OMB on the arsenic rule, but, as with other rules, will make any significant OMB comments that are received publicly available.

Q.4: Do you think OMB's oral and written comments to EPA on a proposed or final rule or regulatory agenda should be confidential, and not disclosed in the public record?

A.4: As a matter of Agency policy and as a statutory requirement for certain Clean Air Act rules, all written comments from OMB to EPA are placed in the public record. I will do everything I can to ensure that this policy and requirement for the Air Program continues to be followed. As a matter of Agency Policy, I understand that any oral communications from OMB to EPA regarding significant new factual data or information is to be summarized in writing by EPA and placed in the public record.

ANSWERS TO OMB QUESTIONS

SENATOR FRANK R. LAUTENBERG
J. CRAIG POTTER CONFIRMATION HEARING

Q.5: Do you think material supplied by EPA to OMB regarding a proposed or final rule or regulatory agenda, including draft rules sent to OMB, should be made public?

A.5: Section 307(d)(4)(B)(ii) of the Clean Air Act requires that any written materials including draft rules that are sent to OMB for certain Clean Air Act rulemakings must be placed in the public record. I will ensure that statutory requirements such as these continue to be followed.

Q.6: Do you think oral and written communications between OMB and an outside party regarding OMB's review of an EPA rule or regulatory agenda should be disclosed to EPA and placed in the public record?

A.6: OMB's Office of Information and Regulatory Affairs initiated procedures last year to ensure that all written communications or any new factual information received through oral communications from an outside party would be forwarded to EPA. I understand that all such material received from OMB is being forwarded to the appropriate program office to be placed in the public record.

Q.7: (a) Do you agree to make oral and written communications between EPA and OMB on a proposed or final rule within your purview available on the public record?

(b) Will you issue guidelines requiring this to your personnel?

A.7: (a) See response to question #4.

(b) Administrator Thomas issued a general policy statement on contacts with persons outside the Agency last May 1985. If I find that more specific guidance is needed, I will either request that the Administrator provide such guidance on an Agencywide basis or, if more appropriate, will issue such guidance for the Air Program Office.

ANSWERS TO OMB QUESTIONS

SENATOR FRANK R. LAUTENBERG
J. CRAIG POTTER CONFIRMATION HEARING

Q.8: Now that EPA has finally issued the proposed asbestos regulations will OMB approval be a prerequisite to issuance by EPA of the final asbestos regulation?

A.8: The proposed asbestos regulations, published in the Federal Register on January 29, 1986, are under the jurisdiction of the Office of Pesticides and Toxics Substances. And, under the circumstances, it would be imprudent for me to comment on questions regarding this program.

Q.9: Will you instruct your personnel that while OMB objections to a rule can be taken into account on the public record, just like anyone's objections made on the public record, there is no requirement that OMB's objections be satisfied, because it is EPA which is charged with the authority to make the rulemaking decision?

A.9: My response here would be consistent with my response in Question #1. Although I recognize the need for appropriate review under Executive Orders 12291 and 12498, I also recognize the ultimate decision-making role and responsibility of the Administrator. I would particularly support the need for timely decision-making.

Q.10: How do you propose to implement the portion (page 9) of yesterday's federal district court decision in the case of EDF v. Thomas, which states that it is incompatible with the will of Congress and the Constitution for OMB to withhold approval of an EPA regulation until EPA accepts OMB's proposals to change the regulation?

A.10: I understand that the district court decision in EDF v. Thomas is being analyzed by our Office of General Counsel and the Justice Department. When that analysis is completed, I would expect the Agency to be able to assess how to respond to the opinion. Meanwhile, I would think it imprudent to otherwise comment on that court decision or its implementation.

ANSWERS TO OMB QUESTIONS

SENATOR FRANK R. LAUTENBERG
J. CRAIG POTTER CONFIRMATION HEARING

Q.11: What proposed or final rules within your purview are still pending for OMB approval?

Can you give me their status, including the date by which EPA expects to issue them, and whether EPA will honor that date even if OMB has not approved the rules?

A.11: I have attached a status of all OAR regulations pending OMB review. None of the regulations now pending OMB review are under court ordered deadline. There are some instances where OMB review under E.O. 12291 has taken longer than the EO provides. This delay does concern me and, if confirmed, I would make it a priority to find out the causes of such delays and to work to eliminate such delays in the future. If OMB review of a particular regulatory package with a court ordered deadline was not complete in time to meet the court ordered deadline I would feel obligated to recommend that the package be published even though the review was not complete.

ANSWERS TO OMB QUESTIONS

SENATOR FRANK R. LAUTENBERG
J. CRAIG POTTER CONFIRMATION HEARING

A.11: (attachment)

AT OMB

Office of Air and Radiation
Regulatory Items
February 4, 1986

	Regulatory Item	Date Submitted
1.	Arsenic - NESHAP	2/14/85
2.	Volatile Organic Liquid Storage NSPS (NRM)	8/15/85
3.	Kraft Pulp Mills NSPS (NPM)	10/24/85
4.	Petroleum Refinery Waste Water NSPS (NPRM)	11/5/85
5.	Polymeric Coatings NSPS (NPRM)	11/22/85
6.	Calciners & Dryers NSPS	12/20/85
7.	Coke Ovens Topside/Chg NESHAP	1/9/86
8.	Methanol Fuel LDU & T/HDE & Motorcycles	12/20/85
9.	SOCMI - VOC Distillation Oper.	1/21/86
10.	SOCMI - VOC Emissions	1/21/86

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 31 1985

THE ADMINISTRATOR

MEMORANDUM

TO: All EPA Employees

SUBJECT: Contacts With Persons Outside The Agency

I want to take this opportunity to reaffirm the guidelines established by former Administrator William D. Ruckelshaus concerning EPA contacts with persons outside of the Agency. The success of our efforts at EPA is directly dependent on the trust of the public we serve. To earn and maintain that trust, we must operate in an open manner, we must be responsive, and we must conduct our business in as fair a manner as possible. I believe that the guidelines set out below will serve to maintain the fairness and openness of our procedures and the public's confidence in our decisions.

General Principles

EPA will provide, in all its programs, for the fullest possible public participation in decisionmaking. This requires not only that EPA employees remain open and accessible to those representing all points of view, but also that EPA employees responsible for decisions take affirmative steps to seek out the views of those who will be affected by the decisions. EPA will not accord privileged status to any special interest group, nor will it accept any recommendation without careful critical examination.

Appointment Calendars

In order to make the public fully aware of my contacts with interested persons, I have directed that a copy of my appointment calendar for each week continue to be placed in the Office of Public Affairs and made available to the public at the end of the week. The Deputy Administrator, and all Assistant Administrators, Associate Administrators, Regional Administrators, and Staff Office Directors shall make their appointment calendars available in a similar manner.

Litigation and Formal Adjudication

EPA is engaged in a wide range of litigation, both enforcement and defensive in nature. All communication with parties in litigation must be through the attorneys assigned to the case. Program personnel who receive inquiries from parties in matters under litigation should immediately notify the assigned attorney, and should refer the caller to that attorney.

Formal adjudications, such as pesticide cancellation proceedings, are governed by specific requirements concerning ex parte communications, which appear in the various EPA rules governing those proceedings. These rules are collected and available in the Office of General Counsel, Room 545, West Tower. I will conduct myself in accordance with these rules, and I expect all EPA employees to do the same.

Rulemaking Proceedings

In rulemaking proceedings under the Administrative Procedure Act, EPA employees must ensure that the basis for the Agency's decision appears in the public record. Therefore, be certain (1) that all written comments received from persons outside the Agency (whether during or after the comment period) are entered in the public record for the rulemaking, and (2) that a memorandum summarizing any significant new factual data or information likely to affect the final decision received during a meeting or other conversations is placed in the public record.

You are encouraged consistent with statutory responsibilities to reach out as broadly as possible for views to assist you in arriving at final rules. However, you should do so in a manner that ensures that final decisions are supported by the public record and the Agency's rationale is fully explained in the preamble to the final rule. This does not mean that you may not meet with one special interest group without inviting all other interest groups to the same meeting, although all such groups should have an equal opportunity to meet with EPA. It does mean, however, that any oral communication regarding significant new factual data or information affecting a rule, including a meeting with an interest group, should be summarized in writing and placed in the public record for the information of all members of the public. In addition to these guidelines, procedures have been established with OMB to ensure that such material received by OMB from outside parties will be placed in the EPA public record.

Finally, in our dealing with the press, I would urge EPA employees also to be open and accessible. While it is important that those who speak to the press concern themselves only with their particular area of expertise, nothing is served by any program limiting contacts with the press. I ask that you inform your Assistant Administrator's office and the EPA Press Office about your official contacts with the press.

I know that I can rely on EPA employees to use common sense and good judgment in their dealing with the public. The openness and integrity in those dealings are essential to ensuring public trust in the Agency.

/s/

Lee M. Thomas

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

MAY 30 1985

Mr. A. James Barnes
Deputy Administrator
Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Dear Jim:

In recent discussions, you have asked us to review our present practices to ensure that factual information pertaining to EPA's rulemaking activities that is made available to us by members of the public is also made available to EPA in a timely manner.

We have reviewed our procedures and we believe that our general policies and practices under Executive Order No. 12291 are sound. However, in response to your request, we would propose certain additional procedures, beyond our existing policies and practices, which, if they are acceptable to you, we would be willing to undertake on an experimental basis.

Background

Our existing procedures implement guidance provided to us by the Attorney General in an opinion of April 24, 1981, entitled "Contacts between OMB and Executive Branch Agencies Pursuant to Executive Order 12291." It complements an earlier analysis by the Attorney General of the legal basis of the Executive Order (Memorandum re: Proposed Executive Order entitled "Federal Regulation," dated February 13, 1981). Both opinions of the Attorney General are enclosed (Tabs A and B).

The earliest of these two opinions of the Attorney General concluded that Executive Order No. 12291, which established the regulatory review process administered by the Office of Information and Regulatory Affairs was a lawful exercise of the President's Constitutional authority--

> "to `supervise and guide' Executive Officers in `their construction of the statutes under which they act in order to secure that unitary and uniform execution of the laws which Article II of the Constitution evidently contemplated in vesting general executive power in the President alone' Myers v. United States, 272 U.S. 52, 135 (1926)."

The second opinion of the Attorney General of April 24, 1981, concluded, in part that:

- The Office of Information and Regulatory Affairs, to which the authority of the Director of OMB under Executive Order No. 12291 has been delegated, "may freely contact agencies regarding the substance of proposed regulations, and may do so by way of telephone calls, meetings, or other forms of communication unavailable to members of the public."

- "[D]isclosure obligations, if any, lie with the rulemaking agency and not with [OIRA]."

- "[OIRA] is therefore under no legal disability with respect to contact with rulemaking agencies. At most, [OIRA] could adopt procedures as a matter of policy to assist the agencies in complying with our recommendation or with rules fashioned by the agencies themselves...." (p. 4).

This opinion, written before the seminal decision of the United States Court of Appeals for the District of Columbia Circuit in Sierra Club v. Costle, 657 F.2d 298 (1981), concluded that the judicial decisions issued until that time were "confused" as to whether an agency must include in its rulemaking record for judicial review factual information received by the agency from officials of the Executive Office of the President (EOP). The Attorney General therefore recommended that agencies include such factual information in their records in order to avoid the possibility of judicial reversal. The Attorney General did not, however, require or recommend inclusion of communications under the Executive Order that form part of the agency's deliberative process, i.e., legal and policy arguments, analyses of the facts, and factual data that cannot reasonably be segregrated from deliberative material.

To implement the recommendations of the Attorney General, OMB Director David A. Stockman issued a Memorandum for the Heads of Executive Departments and Agencies on June 11, 1981, entitled "Certain Communications Pursuant to Executive Order No. 12291, 'Federal Regulation.'" (Tab C). That Memorandum emphasized "that the primary forum for receiving factual communications regarding proposed rules is the agency issuing the proposal, not the Task Force or OMB."

This emphasis on the agency as the forum for receiving factual communications merely reflects, of course, the fact that the Executive Order does not divest an agency head of authority provided by law or the legal requirement that agency rules must be based upon the rulemaking record.

Since these procedures were implemented, the court's decision in Sierra Club has clearly established the propriety of contacts between EOP officials and agencies concerning rulemaking--indeed, it has demonstrated their importance for proper policy

guidance of this critical aspect of government activity--and demonstrated that the procedures recommended by the Attorney General and implemented by the Director's Memorandum go well beyond what is required by law.

Written Materials from Persons Outside the Executive Branch

The Director's Memorandum provided that:

- Factual materials that are sent to the Presidential Task Force on Regulatory Relief or OIRA regarding proposed regulations should indicate that they have also been sent to the relevant agency. Pursuant to this policy, the Memorandum noted that the Task Force and OIRA would regularly advise those members of the public with whom they communicated that relevant factual materials submitted to them should also be sent to the agency for inclusion in the rulemaking record.

- Accordingly, agencies receiving such materials from the public should take care to see that they are placed in the record.

- On occasion, the Task Force staff and OIRA would receive or develop factual material that they believed should be considered by an agency during a particular informal rulemaking. The Memorandum provided that, in accordance with advice provided by the Department of Justice, such material, when submitted to an agency for its consideration, would be identified as material appropriate for inclusion in the record of the agency rulemaking.

To further implement the recommendations of the Attorney General, OIRA established additional procedures, as a matter of policy, beyond the requirements of law and the recommendations of the Attorney General. Thus, we have uniformly and consistently made available to Members of Congress, the agencies, and the public copies of documents concerning an agency rulemaking that we have received from persons who are not officials or employees of the executive branch. We also strive to maintain copies of all such documents in our materials that are available for public review.

In addition to such materials being lodged in our public files and copies being made available upon request, you have asked whether copies of such documents that pertain to EPA rules could be routinely sent to EPA to help ensure that such materials are included, if appropriate, in EPA rulemaking dockets. In order to accommodate you, we will send to the General Counsel of EPA copies of all such documents that we receive from persons outside the executive branch. We will seek to provide these copies within five working days of their receipt in OIRA.

Non-written Communications with Persons Outside the Executive Branch

As you know, our practice with regard to non-written communications with persons outside the Federal Government, e.g., telephone calls and meetings, is to constrain communications that pertain to proposed agency rules. Only the Administrator and I (or OIRA employees specifically authorized by us in unusual circumstances) are authorized to communicate with persons outside the Federal Government on the substance (as opposed to the status) of rules that are subject to review under Executive Order No. 12291. These restrictions also apply to our review of rulemaking activities pursuant to Executive Order No. 12498. These restrictions do not apply to the other functions and activities of OIRA, such as our review of information collection requests under the Paperwork Reduction Act of 1980, even if an information collection request is contained in a proposed rule. In this latter circumstance, different procedures apply. See 5 CFR Part 1320 (Tab D) and OIRA Procedures Memorandum #3 (Tab E). The limitations noted above do, however, apply to the parts of a rule that do not contain an information collection request.

Obviously, senior officials in OIRA must be able to communicate freely with members of the public and persons within the Federal Government, just as the senior officials in EPA do.[1] We have, however, limited such communications essentially to the Administrator and Deputy Administrator. Furthermore, even Doug and I usually do not communicate with persons outside the Federal Government on proposed agency rules while they are under review pursuant to Executive Order No. 12291.

Notwithstanding these procedures applicable to all rules subject to the Order, you have asked whether specific additional procedures could be fashioned to apprise EPA of factual information that becomes available to us as a result of non-written communications with persons outside the Federal Government and that pertain to proposed EPA rules. Before describing what we believe is appropriate, it is useful first to deal with an approach we have rejected and the reasons why.

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[1] As the court stated in Sierra Club v. Costle, "Under our system of government, the very legitimacy of general policymaking performed by unelected administrators depends in no small part upon the openness, accessibility, and amenability of these officials to the needs and ideas of the public from whom their ultimate authority derives, and upon whom their commands must fall....Furthermore, the importance to effective regulation of continuing contact with a regulated industry, other affected groups, and the public cannot be underestimated. Informal contacts may enable the agency to win needed support for its program, reduce future enforcement requirements by helping those regulated to anticipate and shape their plans for the future, and spur the provision of information which the agency needs." 657 F.2d 298,400-1 (1981)

"Logging"

Although you have not suggested it, we believe that a general "logging" program or some variant thereof, particularly between and within executive agencies and entities, would not be an acceptable solution and would, as a general matter, be bad policy. The Attorney General's opinion of April 24, 1981, confirms this at pages 7-9 (Tab A). This view is also reflected in Sierra Club v. Costle, 657 F.2d 298, 404-408 (1981); prior congressional consideration of the issue (see pp 3-4, Tab A); and, EPA's own stated position on the matter (Tab F).

In a nutshell, here is why we think a general "logging" system is a bad idea.

- It is unnecessary. There would be no adverse legal consequence even if we were to have information that is not in the agency record. An agency rule must be based on material in the record. Since EPA cannot rely on information it does not have to support a rule, see 657 F.2d 401, factual information that might be available to us from persons outside the Federal Government, that is not also made available to EPA, is not pertinent. Furthermore, an agency has no use for who-talked-to-whom entries.

- Imposition of a logging requirement would improperly interfere with the communication of policy views within the executive branch and the deliberative process itself. The court in Sierra Club rejected this approach. This was also a basis for Congress' rejection of the proposal to apply "ex parte" requirements to informal rulemaking. See pages 3 and 4 of Tab A, particularly footnotes 5-8.

- It is contrary to the "legislative model" of informal rulemaking[2] adopted by the Congress.

- It would divert attention from whether the agency's decision is a good one--the substantive issue--to how the agency made the decision.

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[2]Where agency action resembles judicial action, where it involves formal rulemaking, adjudication, or quasi-adjudication among "conflicting private claims to a valuable privilege," the insulation of the decisionmaker from ex parte contacts is justified by basic notions of due process. But where agency action involves informal rulemaking of a policymaking sort, the concept of ex parte contacts is of more questionable utility.

- It would establish a paperwork blizzard if all participants in all discussions were required to "log" all communications on the thousands of rules considered every year. This would be nothing short of a bureaucratic nightmare to administer.

- A "logging requirement" would be impossible to "define." When would it begin? Who would it cover? When would it end? What would it consist of? There are neither practical nor principled answers to these questions.

- Such a procedure would logically require the agency to log all of its internal deliberative discussions also--a practical impossibility.

Additional Procedures

Nonetheless, in order to increase the amount of factual information that is available to EPA for its rulemaking decisions, and to respond to your request, we propose the following procedure which, if acceptable to you, we would try for a period of time and then reassess with you.

Whenever the Administrator or I have a meeting or a telephone call with a person outside of the executive branch concerning a proposed EPA rule subject to Executive Order No. 12291, and that meeting or telephone call provides factual information that we are not confident has also been provided to EPA, either the Administrator or I will call the General Counsel of EPA and advise him of the communication and of the relevant factual information. EPA can then do whatever it deems appropriate with regard to the information reported to the General Counsel. Furthermore, with respect to scheduled meetings, if any, we will try for a period of time and for a few rulemakings to provide an opportunity for senior officials of EPA to attend and participate, if they choose to do so. After some experience, we will reassess this procedure, as well.

Please let me know if you believe that we should initiate these procedures.

Sincerely,

Robert P. Bedell
Deputy Administrator
Office of Information and
Regulatory Affairs

Enclosures

MAR 22 1984

Mr. David G. Hawkins
Natural Resources Defense Council
1725 I Street, N.W., Suite 600
Washington, D.C. 20006

Dear Mr. Hawkins:

Thank you for your letter of January 20, 1984, discussing EPA's handling of communications with the Office of Management and Budget (OMB) and other Federal agencies under Section 307(d) of the Clean Air Act.

As you know, Section 307(d) establishes the requirements for maintaining rulemaking dockets under the Act. Among these requirements are the following (Section 307(d)(4)(B)):

> (ii) The drafts of proposed rules submitted by the Administrator to the Office of Management and Budget for any interagency review process prior to proposal of any such rule, all documents accompanying such drafts, and all written comments thereon by other agencies and all written responses to such written comments by the Administrator shall be placed in the docket no later than the date of proposal of the rule. The drafts of the final rule submitted for such review process prior to promulgation and all such written comments thereon, all documents accompanying such drafts, and written responses thereto shall be placed in the docket no later than the date of promulgation.
>
> * * * * *

Your letter expresses two concerns. You state "[f]irst, it appears that the Agency is failing to place draft rules and transmittal documents (and, perhaps, written OMB comments) in the docket as required by Section 307(d)(4)(ii)." I share your concern that these requirements be properly met. Since 1977, EPA has consistently recognized its obligation to docket all written communications with OMB on rules, but its actual practice may not always have kept pace. I have asked Joe Cannon to remind his staff of these requirements.

You also state, "[s]econd, it appears that OMB is evading the clear intent of the law by making oral comments rather than written ones and that EPA is countenancing this evasion by not docketing a record of all such oral communications." I cannot agree with you that EPA is "countenancing" any "evasion" of the law. Section 307(d) requires the docketing only of written communications between EPA and OMB. As you know, EPA has consistently viewed this language as meaning what it says, and as not extending to oral communications.

In enacting Section 307(d), Congress fashioned an unusual set of requirements by, on the one hand, specifying inclusion of documentary communications with OMB and within the executive branch (Section 307(d)(4)(B)(ii)); but, on the other hand, excluding this portion of the docket from the record for judicial review (see Section 307(d)(7)(A)), and not including any requirements for recording oral communications. This reflects, in my view, a carefully balanced approach to provide public overview of the informal rulemaking process, without impeding the free exchange of views.

Indeed, in their 1980 brief filed in the challenge to the new source performance standards for utility boilers EPA and the Department of Justice argued the general proposition that "communication within the executive branch is not only good law but also good government." Sierra Club v. Costle, Brief for Respondents, D.C. Cir. No. 79-1265 and consolidated cases at 141. The brief went on to stress that an automatic logging requirement for conversations would undermine this desirable interchange. Those positions have been consistently held since the Agency's first interpretation of Section 307(d) in 1977, and continuing through various intra-agency memoranda since that time.

In responding to these EPA arguments and discussing the exclusion of written intra-executive branch materials from the judicial review record under 307(a)(4)(B)(ii), the court in Sierra Club v. Costle, 657 F.2d 298 (D.C. Cir. 1981), stated that:

> ... we believe it evinces a Congressional intent for the reviewing court to judge the rule solely upon the data, information, and comments provided in the public docket, as well as the explanations EPA provides when it promulgates the rule, and not to concern itself with who in the executive branch advised whom about which policies to pursue. 657 F.2d at 405 n. 319 (Emphasis added.)

I believe similar concerns about unduly deterring policy debate within the executive branch lie behind the careful distinction Section 307 makes between written and oral comments.

To the extent that your letter requests that I institute requirements and procedures beyond those required by Section 307(d), I believe such an approach is neither warranted nor appropriate. The proper exercise of informal rulemaking authority requires both a full and complete dialogue within EPA, and consultation within the executive branch. As stated in Sierra Club, the rulemaking process involves:

> ... the basic need of the President and his White House staff to monitor the consistency of executive agency regulations with Administration policy. He and his White House advisers surely must be briefed fully and frequently about rules in the making, and their contributions to policy making considered. Id.

Regulations of the type involved here often have broad implications for national policy. Agencies charged with their proposal and implementation must understand the full scope of those policy implications. Our system could not function rationally if EPA were isolated from OMB and the rest of the executive branch. While your letter does not explicitly suggest such an isolation, it would effectively impose such a result through the "documentary microscope" that your requirement would place on communications between EPA and OMB.

Section 307(d) and our guidance for implementing it require that the requisite factual support for any rulemaking appear in the docket, whether that support is supplied by the public, environmental groups, industry, or from within the executive branch. Our procedures presently require this, and will continue to do so. In my view, those are the appropriate limits of any docketing requirements.

I appreciate your views on this matter, and the dialogue they have stimulated. I assure you that we will continue to comply with the requirements of Section 307(d). For the reasons discussed above, I believe that these are the proper limits of our obligations.

Sincerely,

/S/ WILLIAM D. RUCKELSHAUS
William D. Ruckelshaus
Administrator

Prepared by: ESalo/CCarter/dw/382-7620/LE-132A/3-20-84

Follow-up Questions to Craig Potter's Confirmation Hearings
(Q's from Senator Lautenberg)

Q.1: Very little progress has been made in the regulation of hazardous air pollutants under Section 112 of the Clean Air Act. Please provide the names and time schedule for the hazardous air pollutants that you plan to list and the time schedule for the standards that you plan to propose and promulgate. Also, please provide this information about other hazardous air pollutants that are under review for future listing.

A.1: The attached table shows the status of the toxic air pollutant evaluation and control program. I am told that work is currently proceeding on National Emission Standards for Hazardous Air Pollutants (NESHAPS) for all the pollutants in the "Regulatory Decisions" column for which Intent to List decisions have been published. Work is also proceeding on NESHAPS for benzene, arsenic, and coke ovens, and NESHAP revisions for vinyl chloride, asbestos, and Mercury. In the Intent to List category, I am informed that OAR is studying about 40 different source categories for possible NESHAP development and expect to decide by about the end of FY 1986 which ones to develop NESHAPS for. Following this decision point, it generally takes about 3 1/2 years to develop, propose, take comment, and promulgate a NESHAP for a "typical" source category. I hope to be able to accelerate this process for certain source categories and plan on pursuing this wherever possible.

Toxic Air Pollutant Evaluation and Control Program[1]

Preliminary Health Screening	Detailed Assessment[2]	SAB Review[4]	Regulatory Options Analysis[5]	Regulator Decisions[6]	NESHAPS Proposed	NESHAPS Promulgated
Copper	Dibenzofurans	Nickel	Gasoline vapors	Asbestos (L)	Benzene	Mercury
Propylene	Phosgene		Asbestos[3]	Beryllium (L)	Arsenic	Beryllium
Propylene oxide	Acetaldehyde		Dioxins	Vinyl chloride (L)		Asbestos
Chlorine & HCl	Acrolein		Phenol	Coke oven emissions (L)		Vinyl chloride
Ammonia	Cresols		Formaldehyde	Benzene (L)		Benzene
Zinc & Zinc oxide	Hydrogen sulfide		Beryllium[3]	Arsenic (L)		Radionuclides
Styrene				Radionuclides (L)		
Naphthalene				Mercury (L)		
Toluene diisocyanate				Toluene (N)		
Xylenes				POM (N)		
Ethyl chloride				CFC-113 (N)		
Methyl methacrylate				Methyl chloroform (N)		
Maleic anhydride				Epichlorohydrin (N)		
Phthalic anhydride				Manganese (N)		
Methyl isocyanate				Chlorobenzenes (N)		
Mineral fibers				Vinylidene chloride (N)		
				Hexachlorocyclopentadiene (N)		
				Chloroprene (N)		
				Acrylonitrile (S/L)		
				Chromium (IL)		
				Carbon tetrachloride (IL)		
				Ethylene oxide (IL)		
				Chloroform (IL)		
				Ethylene dichloride (IL)		
				Cadmium (IL)		
				1,3-Butadiene (IL)		
				Methylene chloride (ANPR)		
				Perchloroethylene (IL)		
				Trichloroethylene (IL)		

[1] As of 1/13/86.
[2] Health and exposure assessment. Not yet submitted to SAB.
[3] Reassessment of original health effects information.
[4] Submitted to SAB. Recommendations not yet received.
[5] Recommendations received from SAB or no SAB review planned. Analysis underway to determine need for regulation.
[6] L = listed under §112; N = decision not to regulate; S/L = referred for S/L action; IL = intent to list under §112; IR = intent to regulate under CAA, TSCA, SDWA or FIFRA.

Follow-up Questions to Craig Potter's Confirmation Hearings
(Q's from Senator Lautenberg)

Q.2: Mr. Ruckelshaus testified in 1983 that 20 to 25 additional hazardous air pollutants would be listed by the end of 1985. Instead, the Office of Air and Radiation developed an "Intent to List" of the 23 hazardous air pollutants. What is the statutory authority that justifies the "Intent to List" policy adopted by your office last year? Will you pursue this policy?

A.2: Administrator Ruckelshaus committed to Chairman Dingell in November 1983 that the Agency would make 20-25 decisions on hazardous air pollutants by the end of 1985. That commitment was met.* In a September 30, 1985, report, the General Accounting Office issued a determination that the Agency's administration of Section 112 of the Clean Air Act -- including the use of Notices of Intent to List -- was appropriate.

General principles of administrative law authorize Federal agencies to publish statements or advance notices of possible action. The Notice of Intent to List is such a statement, and has the advantages of prompt public notification of our intent, the opportunity for additional public input to the listing decision, and solicitation of additional data that would be useful in developing National Emission Standards for Hazardous Air Pollutants (NESHAPS), if such standards are judged appropriate. In the past, EPA has frequently found that after listing, interested parties provide data indicating that emissions are much different than we, or in some cases they themselves, had previously estimated. The Intent to List provides those that are affected by the listing substantial incentive to submit accurate data to us. Finally, the Intent to List communicates a clear indication to the public of the Agency's concern as early as possible, potentially resulting in activities by States and by the sources themselves to reduce risks to the public long before EPA could issue emission standards to address those risks. The EPA considers a Notice of Intent to List an option that it would continue to use in appropriate circumstances.

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* Eleven of those decisions were decisions to regulate, and development of Federal emission standards is now underway.

Follow-up Questions to Craig Potter's Confirmation Hearings
(Q's from Senator Lautenberg)

Q.3: What is your policy for developing standards? Do you plan to set a Federal minimum standard for all listed hazardous air pollutants or will you pursue the so-called States referral policy outlined in the Agency's Air Toxic Strategy announced last June?

A.3: As indicated in the Agency's Air Toxics Strategy, we intend to use Federal resources to regulate pollutants and source categories that cause significant risks to the public on a nationwide basis. For those pollutants/source categories that cause elevated risks in only a few localized areas, we generally intend to provide all our information to the State and local air agencies affected and work with them as they evaluate and, if necessary, regulate these sources.

Follow-up Questions to Craig Potter's Confirmation Hearings
(Q's from Senator Lautenberg)

Q.4: Meeting the National Ambient Air Quality Standards for ozone is a major interstate pollution problem for New Jersey, as it has been estimated that 50% of the ozone in New Jersey is from out-of-state sources. When do you plan to announce additional Federal requirements, such as gasoline volatility and stage-2 vapor recovery, to ensure regional decreases in this airborne pollutant? What efforts have been made to implement appropriate and effective SIPS regionally? Given the new EPA health effects data, what are the timeframe and the elements of your strategy for revising the ozone National Ambient Air Quality Standard downward? How will such a revision effect the strategy for complying with the 1987 deadline?

A.4: The Environmental Protection Agency staff has done extensive analyses of both the gasoline volatility and vehicle refueling (i.e., stage-2 and onboard controls) issues. Public comment has been received on the vehicle refueling analysis, and the comments have been helpful in sharpening the focus of this analysis. The Administrator has been briefed on the refueling issue and hopes to announce a decision on the need for national controls shortly. The gasoline volatility analysis was put out for public comment last November; currently the Agency is holding hearings and reviewing the comments provided. It will be late summer before the comments can be thoroughly evaluated and the analysis updated, as necessary, to reflect them. It is likely that a decision on gasoline volatility cannot be made before that time.

Ozone SIPS have traditionally been developed on a regional, interstate basis. States within the same metropolitan nonattainment area use a common downwind ozone value and reduction target. Nationally consistent Reasonably Available Control Technology (RACT) rules on stationary sources and minimum levels of reduction from motor vehicle Inspection and Maintenance (I/M) programs are required for SIP approval. Beyond stationary source RACT and vehicle I/M, States may choose additional control measures; however, they must do so within a consultation and coordination framework of elected local officials. In addition, strategies in the New York metropolitan interstate (NY/NJ/CT) area will be assessed using

Follow-up Questions to Craig Potter's Confirmation Hearings
(Q's from Senator Lautenberg)

A.4 cont'd

the grid-based "urban airshed" model this year. This model will provide the most accurate analysis possible of the ozone problem in that region. The Agency has recently completed a second draft of the ozone Criteria Document and made it available for public review. This document will be reviewed by the Clean Air Scientific Advisory Committee (CASAC) in April. At this same meeting the CASAC will also review a draft staff paper in which we integrate and assess the scientific information to determine potential ambient standards which can be supported by the available science. Following this review, we will make any necessary changes in the staff paper, complete our risk assessment and in the fall we expect to have formal concurrence on our scientific assessment by CASAC. This step is essential before we can proceed to develop options regarding any potential changes to the ozone standards. Under our normal review process any needed revisions to the standard will be proposed in early 1988. However, in the event our scientific assessment indicates that faster action is warranted, I will move to substantially accelerate the process. In any case, we do not expect changes to the ozone ambient standard to occur within a timeframe that would affect the 1987 attainment deadline.

Follow-up Questions to Craig Potter's Confirmation Hearings
(Q's from Senator Lautenberg)

Q 1: This Administration has shown a reluctance to deal with this problem, which by EPA's own estimates may be taking as many as 30,000 lives a year in this country. What were the budget requests for radon work submitted by each of the following divisions of EPA to the Administrator for fiscal years 1985-87: Office of Radiation Programs; Assistant Administrator for Air and Radiation; and Office of the Administrator? to OMB? To Congress?

A.1: The budget requests submitted by the Office of the Assistant Administrator for Air and Radiation include the requests of the Office of Radiation Programs. The specific requests are detailed in the chart below. In addition, you should know that EPA also conducted radon-related projects that generated funding within the Agency over and above budget requests outlined here. Those efforts are described in more detail in my response to Question #2 and referenced in the footnote below.

	Request to Administrator		Request to OMB		Request to Congress	
	FTE	TOTAL $	FTE	TOTAL $	FTE	TOTAL $
FY 1985*	0	$0	0	$0	0	$0
FY 1986*	17	$1.1M	0	$0	0	$0
FY 1987	22	$2.0M	22	$2.0M	20	$2.5M

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* No radon-related activities were explicitly included in the Congressional budget requests for FY 1985 and FY 1986. However the Agency did expend $367,000 on radon studies in FY 1985. As a result of the radon levels identified in the Reading Prong, the Agency did reprogram funds to support radon activities in FY 1986 and expects to spend $4,490,000 in FY 1986.

Follow-up Questions to Craig Potter's Confirmation Hearings
(Q's from Senator Lautenberg)

Q 2: How much has the EPA spent on radon over the last five years? Please detail how the money was spent, and how funds in FY 1987 will be spent.

A 2: Spending on radon over the last five years (FY 1981-85) within EPA has been as follows:

FY 1982	---
FY 1983	---
FY 1984	335,000
FY 1985	367,000
FY 1986	4,490,000

In FY 1984 $100,000 was spent on a contract to validate models describing the impact of air treatment systems on radon decay product concentrations. In addition, in that year, $100,000 was invested in the study of health effects of radon exposure, and $135,000 on other mitigation research projects.

In FY 1985 an additional $70,000 was spent on studying the health effects of radon exposure, and $297,000 was spent on mitigation research and demonstration projects.

In FY 1986, the Agency is projecting expenditures of $330,000 to study the health effects of radon exposure. An additional $1,170,000 will be invested in studies of risk assessment and exposure assessment, including the development of measurement protocols, design survey techniques, and the development of identification criteria for high-risk areas. The Agency will also spend $2,760,000 for mitigation research and demonstration projects, the majority of which will be devoted to support of projects in the Reading Prong areas of Pennsylvania, New Jersey and New York. Finally, the Agency will spend $230,000 to assist the effort to provide information to the public about radon, its effects at varying levels, techniques for measuring radon, and methods for mitigating radon problems.

In FY 1987, the President's budget contains a request for 20 FTE and $2.5 million which will be devoted to radon mitigation. Additional resources are contained in the budget for radon research and development activities, however, detailed decisions have not been made on the extent of this segment of the research and development budget. In 1987, the Agency expects to publish information on high risk lands, publish information on control techniques, publish measurement protocols and to initiate the national assessment program.

Follow-up Questions to Craig Potter's Confirmation Hearings
(Q's from Senator Lautenberg)

Q 3: Do you feel that the EPA's attention to the problem of radon has been adequate to treat this health threat?

A 3: I don't think it would be possible to answer your question at this point in time. As we discussed at the hearing, the Agency has embarked on a multi-year program to assess and mitigate the risks presented by this environmental hazard. Until we are farther along in that effort, it would be premature to judge the adequacy of EPA's activities past and present. I do think the problem is a serious one and I intend to devote a major part of my time to answer the important question you raised. This program addresses four major aspects of the radon problem, including: (1) exposure and risk assessment; (2) mitigation of exposure in existing structures; (3) prevention of exposure in future construction; and (4) program direction and leadership. Key components of the program include a national assessment to determine the distribution of indoor radon levels around the country and to characterize those areas in which elevated levels are found; development of a model to predict the potential for structures built on certain land types to have elevated indoor radon concentrations; development of inexpensive and accurate measurement techniques and protocols; demonstration of low-cost remedial and preventive construction techniques; establishment of a Federal clearinghouse for information on assessing and mitigating exposure to indoor radon; support for State training programs on measurement techniques, risk evaluation, and remedial methods; coordination of Federal efforts in addressing indoor radon; and issuance of technical guidance and advice to States in developing policies to mitigate indoor radon exposure.

In response to the very serious situation of extremely elevated indoor radon levels found in homes on the Reading Prong, the Agency has accelerated those components of its national program which would be most beneficial to New Jersey, New York, and Pennsylvania. We expect to issue within the next two months detailed measurement protocols for use in both screening a house to determine whether it has an indoor radon problem and in estimating a home's annual radon concentration to determine the need for long-term remedial action. In addition, we have developed, in conjunction with New Jersey, New York and Pennsylvania, a measurement proficiency program.

Follow-up Questions to Craig Potter's Confirmation Hearings
(Q's from Senator Lautenberg)

A 3: (Cont'd) Finally, we have been working with the various States, including the three States affected by the Prong, the Department of Energy, and the Centers for Disease Control to develop guidance for risk evaluation and remediation risks and in deciding whether to take remedial action. The Environmental Protection Agency has plans to expand its program to demonstrate effective low-cost remedial techniques. This planned expansion will be discussed in more detail in Question 11.

Q 4: Since I questioned Administrator Thomas about radon in April of 1985, there has been some significant - and long overdue - progress within the Agency in this area. In light of the information indicating that a significant portion of this country's lung cancer deaths each year are attributable to radon exposure, are you prepared to make a commitment as Assistant Administrator to adequate funding and work on radon?

A 4: As I indicated in my response to the previous question, the Agency recognizes the very serious risks associated with exposure to elevated levels of indoor radon. Administrator Thomas has indicated to me his concern about this environmental problem and impressed upon me the urgency and importance he places on EPA's Radon Action Program. As Assistant Administrator for Air and Radiation, I fully intend to carry out the objectives of the Agency's radon program.

Q.5: Where would you rank radon among the environmental threats under the jurisdiction of the Assistant Administrator for Air and Radiation?

A.5: In light of the scientific evidence suggesting that between 5,000 and 20,000 lung cancer deaths each year may be attributable to indoor radon exposure, I believe that radon is one of the most serious environmental problems being addressed by the Office of Air and Radiation (OAR). The Office certainly addresses many other very important problems, but I am particularly determined to assist States in rapidly developing solutions to the problem of indoor radon. I firmly support the Radon Action Program the Agency has developed and is now implementing, and will give high priority to the timely and successful accomplishment of the lead efforts of OAR in that program.

Follow-up Questions to Craig Potter's Confirmation Hearings
(Q's from Senator Lautenberg)

Q.6: EPA has been in the process of developing health guidelines for radon exposure in homes. What is the status of those guidelines?

A.6: EPA is currently proceeding to develop guidance to assist in the evaluation of risks associated with elevated concentrations of indoor radon and in determining an appropriate course of action to mitigate those risks. The intention of the guidance is not to dictate specific actions for homeowners to follow; instead, we intend to place the risks in perspective and to describe remedial action that might be appropriate within specified timeframes.

EPA is also developing interim guidance in support of various States, including New Jersey, New York, and Pennsylvania. In addition, comments have been solicited from the Department of Energy (DOE) and the Centers for Disease Control (CDC). Additional public input has also been developed through the conduct of several "focus groups" in Pennsylvania. These four groups, each of which consisted of six to ten homeowners, were asked to evaluate various approaches to presenting risk information.

The Agency feels and I strongly support the notion that it is important to develop a readily understandable guidance document. I am told that EPA plans to have a final review of the guidance by a group of ten to fifteen States, DOE, and CDC this month and expect the guidance to be issued within the next two months.

Follow-up Questions to Craig Potter's Confirmation Hearings
(Q's from Senator Lautenberg)

Q.7: The "acceptable level" of radon exposure which has been most commonly used by the EPA and by many states is .02 working levels. I realize that environmental health is at times an inexact science. However, to the best of your abilities, please provide: the elevated risk of lung cancer an adult would face from exposure to this level of radon? How much would a child face from exposure to this same level?

A.7: Below are two sets of EPA estimates of the range of excess lifetime risk of lung cancer death due to exposure to 0.02 working levels (WL). The first set is for one-year exposures to 0.02 working levels (WL) for a child (5 years old) and adult (25 years old). The second set is for exposures starting at the age shown and continuing to age 70. The estimates are based on a risk model recommended by the EPA's Science Advisory Board. Other parameters used in the estimates are listed below:

1-Year exposure to 0.02 WL:

Adult - For 1 year of exposure to 0.02 WL at age 25, the excess lifetime risk of fatal lung cancer is estimated to be from 0.1 in 1000 to 0.5 in 1000.

Child - For 1 year of exposure to 0.02 WL at age 5, the excess lifetime risk of lung cancer is estimated to be from 0.3 in 1000 to 1 in 1000.

Exposure to age 70 at 0.02 WL, beginning at the ages shown:

Adult - For 45 years of exposure to 0.02 WL beginning at age 25, the excess lifetime risk of fatal lung cancer is estimated to be from 3 in 1000 to 10 in 1000.

Child - For 65 years of exposure to 0.02 WL beginning at age 5, the excess lifetime risk of lung cancer is estimated to be from 8 in 1000 to 30 in 1000.

Follow-up Questions to Craig Potter's Confirmation Hearings
(Q's from Senator Lautenberg)

A.7: cont'd Calculations based on the following:

- Lifetable analysis based on 1980 U.S. general population
- Mortality rates for 1970
- 75% of each day spent indoors
- Evidence from atomic bomb survivors suggests that children may be several times more sensitive to radiation than adults. This data is not conclusive and the Agency's radon risk model does not assume any increased sensitivity to radiation exposure for children. (Differences between the adult and child risk estimates above result from differences in breathing rates and lung sizes.)

Q 8: The EPA is in the process of designing a national assessment of radon "hot spots". What is the status of this work?

A 8: EPA's focus at the present time is on designing an assessment of radon levels in residential structures. This first phase of activity, including logistical tasks and the testing of key elements of the study design, is scheduled to be completed in 9 to 12 months. The second phase, measurements and data collection, will then require from 12 to 18 months. The final phase includes the analysis of data and presentation of results and will require an additional 6 to 18 months. The objectives of the assessment are (1) to determine the frequency distribution of radon in residential structures (i.e., the national distribution) and (2) to determine if associations exist between geological and soil structure features and radon levels in residential structures. The Agency is working with the U.S. Geologic Survey to identify areas of potentially high and low indoor radon areas that can be compared during the assessment. Preliminary information will be available in about two years.

Follow-up Questions to Craig Potter's Confirmation Hearings
(Q's from Senator Lautenberg)

Q 9: How many staff are currently involved in radon-related work? How are their responsibilities distributed?

A 9: Two major components of the Agency carry the bulk of the workload in conducting the Radon Action Program. The Office of Radiation Programs (ORP) is investing about 20.5 FTE's on an annual basis in radon-related work. ORP has the principal responsibilities for designing and conducting a program to assess on a national basis the extent to which indoor radon represents a health hazard; for assisting States in the design of measurement programs; and for developing guidance on evaluating the risks posed by exposure to indoor radon, and approaches which can be pursued to reduce those risks.

The Office of Research and Development is devoting about 4.8 FTE's on an annual basis to studies of the health effects of radon exposure and to mitigation research, including the demonstration project in the Reading Prong area.

In addition, staff members from Region 2 and Region 3 are involved in coordinating Headquarters activities with State and local agencies. Finally, staff from the Office of Policy, Planning, and Evaluation and the Office of External Affairs also participate in the program as appropriate.

Q 10: Will additional staff be required to carry out your radon plan for FY 1987? For FY 1988-91?

A 10: The FY 1987 budget request to the Congress includes a request for 20 FTE's within the permanent base of the Office of Radiation Programs to carry out functions of both the National Assessment program and of the measurement and assistance program in the Reading Prong areas of Pennsylvania, New Jersey, and New York. This is the same level of effort which is being devoted to radon-related activities in FY 1986. It is too early to determine whether there will be a need for additional staff in FY 1988-91 for the Radon Action Program. I would propose to maintain a continuing assessment of the progress of the program, and will seek resources to support it commensurate with its requirements in the context of the overall Office of Air and Radiation programs.

Follow-up Questions to Craig Potter's Confirmation Hearings
(Q's from Senator Lautenberg)

Q 11: Administrator Thomas recently wrote me outlining his plans to expand EPA's radon mitigation demonstration program into New Jersey. What is the status of this work?

A 11: In EPA's FY 86 Appropriations Bill the Congress added $1.5 million to the Office of Research and Development for additional radon mitigation work. EPA is in the process of designing the next phase of the research development and demonstration program. One of the options under consideration would involve mitigation activity in both New Jersey and New York to supplement the Pennsylvania activities. Working through our New York Regional Office, the Agency will be asking both New Jersey and New York to identify between 50-100 homes having elevated levels of radon within a radius of 40 miles to allow us to consider mitigation work on several houses for each state. It would be reasonable to expect completion of our planning for the next round of mitigation research activities by April of this year. At that time, we should be able to lay out the next phase of the mitigation research program including the possible New Jersey and New York mitigation activities.

Q 12: Is the EPA going to adopt the five-year strategy outlined for the Administrator in July, 1985?

A 12: Yes. Based on what I've been told, I expect this program to be implemented over the next several years, to the extent permitted by the Agency's budget. Additionally, because we have chosen to accelerate certain tasks of the national strategy to meet the needs of the States affected by the Reading Prong, the five-year plan presented in July, 1985 may be somewhat outdated. Consequently the Agency is now revising and modifying the strategy for the national nal program to reflect the changes in program direction necessary to respond to the Reading Prong situation.

Follow-up Questions to Craig Potter's Confirmation Hearings
(Q's from Senator Lautenberg)

Q 13: How much money has been spent to date on your mitigation program in Boyertown, Pennsylvania?

A 13: To date, the Agency has expended approximately $150,000 on its radon mitigation program in the Boyertown area, and has also expended approximately 2 man-years of EPA engineering effort for this program.

Q 14: How would you classify the success of the mitigation demonstration project?

A 14: The EPA mitigation program has been directed at developing and demonstration methods that are capable of reducing indoor radon concentrations from levels in excess of .5 working levels to .02 working levels. No commercially available methods can consistently and confidently achieve this high (greater than 90%) level of control. Ultimately, in order to be completely successful mitigation methods must be reasonable in terms of installation and operating costs and be able to be confidently applied to a wide variety of housing types. The objective of the current first phase of this program is to concentrate on the relatively simple unfinished basement home without exterior brick veneer and complicating basement walls and fireplaces. I would think it would be fair to judge the program to be successful in demonstrating affordable mitigation techniques capable of very high levels of radon control for the relatively simple basement home described above; costs for these techniques would typically range from $1500 to $3000. However, the applicability of these methods for other housing configurations such as homes with exterior brick veneer, basement fireplaces and other complications is an important goal in the next phase of our mitigation program. I am told that the results to date show considerable promise and hope that we will be able to develop widely applicable radon mitigation methods for many types of homes.

RESPONSES TO QUESTIONS FROM SENATOR
BURDICK

QUESTION 1

What is EPA's timeframe in recommending a solution to the acid rain problem?

ANSWER TO QUESTION 1

There is no simple straightforward answer to this question. EPA carries out its research activities as part of the National Acid Precipitation Assessment Program, established in 1980 as a ten year federal interagency research effort. NAPAP is scheduled to provide a preliminary report later this year, and a final assessment in 1989. These assessments may provide the scientific information necessary to form an appropriate solution.

Although there are many scientific uncertainties, we have taken several steps which should minimize the time it takes to get the answers we need. We are relying on extensive peer review to study designs to maximize the chances that we will get valid and useful results. In addition, the research program is working closely with policy staff to insure that the research is targeted to cover the scientific questions most critical to policy developement and that policy staff are aware of the most recent advances in our scientific understanding.

QUESTION 2

For states like North Dakota that conduct their own baseline data [collection] regarding acid rain, would EPA support federal funding to those states to ensure their continued research?

ANSWER TO QUESTION 2

The Agency would support the principle of Federal-State cost sharing in order to increase the number of stations in the wet deposition monitoring network, provided that these stations followed the National Trends Network (NTN) procedures and met the associated quality assurance requirements. However, the Agency has no resources under either the NAPAP budget or Section 105 (State Air Program Grants) to support individual wet deposition stations. Responsibility for the NTN rests with the US Geological Survey.

QUESTION 3

Does the Administration want to move separate clean air and acid rain bills?

ANSWER TO QUESTION 3

The Administration believes that it is premature to move forward with an acid rain bill, either separate from, or in combination with a clean air bill.

QUESTION 4

Does the Administration have any recommendations for how to raise revenues for an acid rain program?

ANSWER TO QUESTION 4

No, until we have resolved what approach should be taken on acid rain, it would be premature to propose a revenue raising mechanism. We will be in a better position to consider possible cost sharing mechanisms when we and those being asked to shoulder the costs have a clearer idea of the approach being proposed.

QUESTION 5

What is EPA's view of Drew Lewis' recommendation to help Canada and the United States resolve North America's acid rain problem?

ANSWER TO QUESTION 5

President Reagan and Prime Minister Mulroney have officially endorsed the Report on Transboundary Acid Rain submitted to them by their Special Envoys, Drew Lewis and William Davis. This endorsement includes the full acceptance of its findings and a commitment to actively pursue implementation of its recommendations. The report makes recommendations in three areas: initiation of a major multi-year program for the commercial demonstration of cost effective and innovative pollution control technologies for major sources of acid forming pollutants; continued emphasis on research to help answer critical scientific questions related to transboundary acid rain; and enhanced cooperation between the U.S. and Canada such as bilateral consultations and information exchange.

The Special Envoy process enabled both nations to take an independent look at the very difficult transboundary acid rain issue. The envoys are to be congratulated for their joint efforts. Their frank and candid discussions have culminated in a set of common recommendations that both countries must consider carefully and build upon collectively in future discussions.

QUESTION 6

Do you feel the Administration needs to assess its policy of conducting more research on the causes of acid rain against the need to develop and implement a comprehensive national program?

ANSWER TO QUESTION 6

The Administration policy is not one of conducting more research in lieu of developing a response to the problem, rather it is one of research in support of crafting a solution. In addition to the accelerated research effort, we have ongoing efforts to review policy alternatives and analyze program implementation issues. Together these three program thrusts along with continued implementation of the existing Clean Air Act represent a major commitment to solving the acid rain problem. Attached is Administrator Thomas' December 11, 1985 testimony before the Senate Environment and Public Works Committee. I believe it effectively expands the above points and explains the Administration policy.

QUESTION 7

In light of Bhopal, should the Clean Air Act be amended to provide for control of accidental and sudden releases of hazardous air pollutants?

ANSWER TO QUESTION 7

No. The EPA believes that the Air Toxics Strategy announced last June represents the most appropriate approach to dealing with accidental releases at the current time. Briefly, this Strategy involves a non-regulatory program (the Chemical Emergency Preparedness Program announced last December) that (1) reinforces private sector self-interest in preventing and controlling accidental releases, and (2) aggressively builds public-sector capabilities to prepare for and respond to environmental emergencies. The Strategy also utilizes existing authorities under CERCLA and TSCA to enhance accident prevention and control programs. For example, under CERCLA, EPA has placed greater emphasis on enforcing the Reportable Quantities program and is considering expanding the RQ program to focus on frequent or serious violators. We do not feel that we know enough at this time about alternative regulatory programs, their cost, and potential value in preventing accidental releases to recommend any statutory changes. We believe that regulatory programs adopted without good understanding could dilute industrial responsibility and impose resource demands that are beyond the capability of the States or EPA to implement.

QUESTION 8

What are the proper roles of the Federal, State and local governments in controlling hazardous air pollutants?

ANSWER TO QUESTION 8

The Air Toxics Strategy describes the roles that we believe are appropriate in some detail. In brief, the strategy continues to emphasize a strong direct Federal regulatory program specifically targeted to pollutants and sources that are significant on a nationwide basis so as to achieve the greatest public health benefits.

At the same time, the strategy provides resources to strengthen the States to permit them to play a vigorous role in evaluating and regulating toxic air pollutants. State enforcement of Federal hazardous pollutant emission standards will become more complex as Federal regulations include more area, non-traditional and multi-pollutant sources. States should also have the capability to evaluate and, if appropriate, regulate sources of air toxics that are not appropriate for national regulation but may cause localized problems of concern.

We will also expand the current studies of local toxics problems and will work more closely with States and localities on the identification and control of problems linked to multi-pollutant/ multi-source interactions in urban areas. The EPA will apply the lessons learned from geographic investigations to ensure effective integrated environmental management. In summary, the air toxics problem is too complex, diverse, and widespread to be solved exclusively at the Federal level; it is necessary and appropriate to bring State and local resources and expertise to bear on the problem as well.

QUESTION 9

Last year, an EPA special task force made a barebones assessment of potential health problems faced by Americans because of prolonged exposure to indoor air pollution. Has EPA followed up on the task force's assessment in terms of developing an overall policy or instituted specific research studies?

ANSWER TO QUESTION 9

The purpose of the EPA task force on indoor air quality was to review the potential roles that EPA might adopt with respect to indoor air concerns. As a result of the work of the task force, EPA proposed the formation of an indoor air policy coordination staff within the Office of Air and Radiation. We are in the process of organizing this staff. We expect that EPA's work in indoor air will emphasize field studies to measure exposure to major indoor pollutants such as VOCs, NO_2 and inhalable products.

○